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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~137.~~ 7

WILLIAM J. BRYAN, MOSES A. BRYAN, AND GUY M. BRYAN, PLAINTIFFS IN ERROR,

VS.

FERDINAND B. KENNETT, JOHN TEASDALE, CHARLES A. MALLORY, AND FANNIE MALLORY, HIS WIFE, MARGARET DEAN, AND ANNIE G. DEAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 16, 1880.

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1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the March term, 1878, thereof, between William J. Bryan, Moses A. Bryan, and Guy M. Bryan, plaintiffs, and Ferdinand B. Kennett, John Teasdale, Charles A. Mallory, and Fannie Mallory, his wife, Margaret Dean, and Annie G. Dean, defendants, a manifest error hath happened, to the great damage of the said plaintiffs, William J. Bryan, Moses A. Bryan, and Guy M. Bryan, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.]

M. M. PRICE,
Clerk Circuit Court of the United States,
Eastern District of Missouri,
By A. P. SELBY, *Deputy.*

Allowed by—

SAMUEL TREAT, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 12th day of October, A. D. 1880.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By T. L. CRAWFORD, *D. C.*

(Indorsed:) No. 830. United States circuit court, eastern district of Missouri. William J. Bryan et al. vs. Ferdinand B. Kennett et al. Writ of error to the circuit court of the U. S., eastern district of Missouri. Returned and filed day of , 187 . , clerk.

3 The United States of America to Ferdinand B. Kennett, John Teasdale, Charles A. Mallory, and Fannie Mallory, his wife, Margaret Dean, and Annie G. Dean, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein William J. Bryan, Moses A. Bryan, and Guy M. Bryan are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this 29th day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

SAMUEL TREAT,
Judge United States District Court for Eastern District of Missouri.

4 (Indorsed:) 830. United States circuit court, east'r' district of Missouri. Wm. J. Bryan et al. vs. Ferdinand B. Kennett et al. Citation. Filed Dec. 29th, 1879. M. M. Price, clerk.

5 Know all men by these presents that we, Wm. J. Bryan, Guy M. Bryan, M. A. Bryan, Edward C. Smith, as principal, and August Gehuer, as surety, are held and firmly bound unto Ferdinand B. Kennett, John Teasdale, Charles A. Mallory, and Fannie Mallory, his wife, Margaret Dean, and Annie G. Dean, in the full and just sum of five hundred dollars, to be paid to the said Ferdinand B. Kennett, John Teasdate, Charles A. Mallory, and Fannie Mallory, his wife, Margaret Dean, and Annie G. Dean, their heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas, lately, at the March term, A. D. 1878, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between William J. Bryan, Moses A. Bryan, and Guy M. Bryan, plaintiffs, and Ferdinand B. Kennett, John Teasdale, Charles A. Mallory, and Fannie Mallory, his wife, Margaret Dean, and Annie G. Dean, defendants, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said plaintiffs, William J. Bryan, Moses Bryan, and Guy M. Bryan shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

WM. J. BRYAN,
GUY M. BRYAN, &
M. A. BRYAN, } [SEAL.]
By E. C. SMITH, *Att'y.* [SEAL.]
AUGUST GEHUER. [SEAL.]
EDW'D C. SMITH. [SEAL.]

Approved by—

SAMUEL TREAT, *Judge.*

6 (Indorsed:) No. 830. United States circuit court, eastern district of Missouri. Wm. J. Bryan et al. vs. F. B. Kennett et al. Bond. $500. , principal. , sureties. Filed 29' day of Dec., 1879. M. M. Price, clerk.

7 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

Be it remembered that on the 13th day of July, 1876, there was filed in the office of the clerk of the circuit court of the United States for the eastern district of Missouri a certain petition, which said petition is in words and figures following, to wit:

Petition.

In the circuit court of the United States for the eastern district of Missouri, September term, 1876.

WILLIAM J. BRYAN, MOSES A. BRYAN, GUY M. Bryan, plaintiffs,
vs.
FERDINAND B. KENNETT & JOHN TEASDALE, Charles H. Mallery, Fannie Mallery, Margaret Deane, brought in by order of court on motion, defendants.

The plaintiffs state that on the first day of May, in the year of our Lord one thousand eight hundred and seventy-six, they were lawfully entitled to the possession of one undivided half part of the following-described parcel of land or premises, situate and being in the county of Washington and State of Missouri; in Township' thirty-seven and thirty-eight North, in Range two East of the fifth Principal Meridian, and being a part of United States survey number four hundred and thirty (430), bounded and described as follows: Beginning at the corner of the
8 Mine à Breton survey, so called (being said U. S. survey No. 430), in the front of the late dwelling of the late Moses Austin, known

by the name of Durham Hall; thence running Southwest seventy-two poles, more or less, to a corner of the Mine à Breton survey; thence with the said survey West-northwest to another corner of the said survey on the citadel, so called; thence Southwest on the said survey to the dividing line between what was the land of John Rice Jones and the said Moses Austin; thence with that line to the West line of the Mine à Breton survey; thence West-northwest with the last-mentioned line to the lower division line between what was the land of Joh Rice Jones and the said Moses Austin, near Bates' Creek, so called; thence along said line down said creek to the South corner of a tract formerly belonging to Elias Bates; thence down said creek to the Northeast corner of the survey of said Bates; thence along the line of the said Bates survey to the North corner thereof; thence Northeast, crossing the old mill creek to the Boon's Lick road, so called; thence up said road runs as the same runs to the North corner of the first town plat of Potosi; thence along the boundary line of the first town plat of Potosi to the West corner thereof, and to a lot formerly sold to Enoch Winds by the said Moses Austin; thence along the boundary of the first town plat of Potosi to the South corner thereof; thence to the place of beginning, containing six hundred and forty acres.

9 And being so entitled to the possession thereof, the defendant afterwards, on the second day of May, A. D. 1876, entered into said premises, and unlawfully withhold from the plaintiffs the possession thereof, to their damage in the sum of one thousand dollars.

Plaintiffs further aver that the defendants were in the possession of the above-described premises or parcel of land at the time of the commencement of this suit, and that the monthly rents and profits of the premises occupied by defendants are one thousand dollars, and the value of the land sued for is over five thousand dollars:

Wherefore plaintiffs ask judgment against defendants for the possession of the premises, and for the damages for the detention thereof, and for the monthly rents and profits thereof, and for costs.

By D. T. JEWETT,
Their Att'y.

And upon which petition there was issued a certain summons, which, with the marshal's return thereon, is in words & figures following, to wit:

10 *Summons.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

In the circuit court of the United States in and for said district.

The President of the United States of America to the marshal of the United States in and for said district, greeting:

You are hereby commanded to summon Ferdinand B. Kennett and John Teasdale, citizens of the State of Missouri, that they be and appear before the honorable circuit court of the United States in and for the eastern district of Missouri, on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the third Monday of

September next, then and there to answer the complaint of William J. Bryan, Moses A. Bryan, and Guy M. Bryan, citizen' of the State of , as set forth in the petition filed in said court on the 13th day of July, A. D. eighteen hundred and seventy-six.

Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 14th day of July, A. D. eighteen hundred and seventy-six.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

11 UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

I have executed the within summons by delivering a copy thereof to the within-named John Teasdale, at Potosi, in said district, this 28th day of August, A. D. 1876.

H. W. LEFFINGWELL,
U. S. Marshal,
By OTIS K. WHEELER,
Special Deputy.

I have executed the within writ by delivering a copy thereof, together with a copy of the petition thereto attached, to the within-named Ferdinand B. Kennett, at St. Louis, in said district, on the 22nd day of August, A. D. 1876.

H. W. LEFFINGWELL,
United States Marshal, Eastern District of Missouri,
By OTIS K. WHEELER, *Deputy*.

(Indorsed:) No. 830. United States circuit court, eastern district of Missouri. Wm. J. Bryan et al. vs. Ferdinand B. Kennett et al. Summons. Issued 4' day of July, A. D. 1876. Ret'ble 18' day of Sep., A. D. 1876. Returned into court and filed Sept. 2nd, A. D. 1880. W. M. Price, clerk.

12 And afterwards, to wit, on September 18th, 1876, there was filed and entered of record the following entry of appearance, to wit:

Appearance.

WILLIAM J. BRYAN ET AL.
vs.
FERD. B. KENNETT ET AL. } No. 830. September term, 1876.

And now come the defendants in the above-entitled cause, and enter their appearance herein as parties defendant in obedience to the writ herein issued on the 14th day of July, A. D. 1876.

DONOVAN & CONROY,
For Def'ts.

And afterwards, to wit, on September 20th, 1876, there was filed the following answer, to wit:

Answer.

In the circuit court of the United States for the eastern district of Missouri.

William J. Bryan, Moses A. Bryan, and Guy M. Bryan, pl'ffs, *vs.* Ferdinand B. Kennett et al., defendants. } No. 830. September term, A. D. 1876.

The defendants, for answer to plaintiffs' petition, deny that at the times alleged in said petition plaintiffs were entitled to the possession of one undivided half part of the premises described in petition. They deny that on May 2nd, 1876, the' entered into possession of said premises. They deny that on said date they unlawfully withheld from plaintiffs possession of said premises. They deny that plaintiffs have been damaged in the sum of one thousand dollars, or any other sum, by reason of said
13 alleged entry and withholding of possession of said premises. They deny that the monthly rents and profits of said premises are one thousand dollars. These defendants have not knowledge or information sufficient to enable them to form a belief whether or not said premises are of the value alleged in petition, and ask proof thereof.

And further answering, these defendants say that they and the parties under whom they claim have been in continuous possession of the premises described in plaintiffs' petition for a period of time exceeding thirty years prior to the 27th day of February, 1874; that neither the plaintiffs nor those under whom they claim have been in possession or paid taxes on said property during said time; that the equitable title to said land emanated from the Government of the United States for more than ten years prior to said 27th day of February, 1874; that no action for the recovery of said premises has been brought by plaintiffs or those under whom they claim prior to the institution of this action; that by reason thereof said plaintiffs' right, if any they had, are barred under the laws of the State of Missouri.

And having answered as aforesaid, these defendants ask to be hence discharged and for their costs of suit.

DONOVAN & CONROY,
For Def'ts.

14 And afterwards, to wit, on October 11th, 1876, there was filed the following replication, to wit:

Replication.

In the circuit court of the United States for the eastern district of Missouri.

Wm. J. Bryan & others *vs.* Ferdinand B. Kennett & al. } Sept. term, 1876.

And now for replication to def'ts answer the plaintiffs deny that def'ts and those under whom they claim have been in continuous possession of the premises for a period of time exceeding thirty years before the 27th day of Feb., 1874; and deny that neither the pl'ffs nor those under whom they claim have neither been in possession nor paid taxes *in* said property during the time alleged; and deny that the equitable to said land emenated from the Government of the United States more than ten years, or ten years prior to said 27th of February, 1874, & deny that the rights of the pl'ffs are barred by or under the laws of Missouri.

D. T. JEWETT,
Att'y for Pl'ff.

And afterwards, to wit, on March 31st, 1877, there was filed the following stipulation for continuance, to wit:

Stipulation.

In the circuit court of the United States for the eastern district of Missouri.

William J. Bryan et al.
vs. } #830.
Ferd. B. Kennett & al.

This cause may be continued by consent to September term, 1877.

15 D. T. JEWITT, *Att'y for Pl'ff.*
DONOVAN & CONROY, *For Def'ts.*

March 26th, 1877.

And afterwards, to wit, on January 23rd, 1878, there was filed the following motion to make Fannie Mallery & others parties defendant in said cause, to wit:

Motion to make Fannie Mallery et al. codefendants.

In the circuit court of the United States for eastern district of Missouri, ss.

William J. Bryan et al.
vs. } No. 830.
Ferd. B. Kennett.

And now come defendants and move the court that the owners of the land described in petition, and through whom defendants claim title to the premises described in petition, to wit, Fannie Mallery, and Charles H. Mallery, her husband, Margraret Deane, and Annie G. Deane, be made parties defendant herein.

DONOVAN & CONROY, *For Def'ts.*

And on the day last aforesaid. the following proceedings were had and appear of record in said cause, to wit:

William J. Bryan et al., plaintiffs,
vs. } 830.
F. B. Kennett et al., defendants.

Motion sust'd. Leave to answer.

Now come Fannie Mallery, and Charles H. Mallery, her husband, and Margaret Deane, and Annie G. Deane, and file motion to be made codefendants in this case, on consideration whereof the court orders that said motion be, and the same is hereby, sustained, whereupon Donovan 16 and Conroy enter their appearance as attorneys for defendants herein, and on motion of said attorneys leave is granted said defendants to file answer within twenty days from this date.

And afterwards, to wit, on the same day, to wit, January 23rd, 1878, the said last-named defendants by their attorneys entered their appearance as follows, to wit:

Appearance of certain def'ts.

In the circuit court of the United States for the eastern district of Missouri.

WILLIAM J. BRYAN ET AL.
vs. } No. 830.
FERDINAND B. KENNETT ET AL.

And now come Charles H. Mallery, and Fannie Mallery, his wife, Margaret Deane, and Annie G. Deane, who have been made codefendants herein by order of court, and enter their appearance herein as such parties defendant.

DONOVAN & CONROY,
For said Def'ts.

And afterwards, to wit, on March 13th, 1878, there was filed in said cause the following separate answer of Fannie Mallery et al., to wit:

Separate answer of Fannie Mallery et al.

In the circuit court of the United States for the eastern district of Missouri.

WILLIAM J. BRYAN ET AL.
vs. } No. 830.
FERD. B. KENNETT ET AL.

17 And now come Charles H. Mallorey, Fannie Mallory, Annie G. Dean, and Margaret Dean, and for their separate answer herein deny each and every the material allegations in plaintiffs' petition.

And for further answer herein these defendants say that neither plaintiffs, nor any person under whom they claim, were seized or possessed of the premises in said petition described within ten years before the commencement of this action; that said premises, and every part thereof, were, on the 31st day of December, A. D. 1837, held, claimed, and possessed by these defendants and those under whom they claim adversely to all persons whomsoever, and that their said possession has been open, actual, and continuous from said last-mentioned date to the present time. Wherefore these defendants say that plaintiffs' claim, if any, to said premises is barred by the statutes of limitation of the State of Missouri, and these defendants plead said statutes in bar of this action.

And for a further defense herein these defendants say that heretofore, to wit, on the 10th day of April, A. D. 1803, the equitable title to the land described in plaintiffs' petition eminated from the Government of the United States; that said land has not been in the possession of plaintiffs or

18 of any person under whom plaintiffs' claim for a period of time exceeding thirty years prior to the 27th day of February, 1874; that neither said plaintiffs nor any person under whom said plaintiffs claim have paid taxes upon said land for said period of thirty years; but on the contrary these defendants and those under whom defendants claim have been during all said period of time and now in adverse and continuous possession of said land, and have paid taxes thereon, as provided by law; that heretofore, to wit, on the 10th day of June, 1814, all title, both legal and equitable, to said land issued from the Government of the United States; that no action to recover said land has been instituted, as provided by law, prior to the institution of this suit. Wherefore, these defendants say that by reason of said default of plaintiffs to institute their said action within the times provided by law, any right, claim, or estate in said land which they had or claim to have had in said land has become vested in these defendants under the laws of the State of Missouri.

And for a further defense herein these defendants say that on the first day of April, 1836, John Dean, under whom these defendants claim, was in actual possession of the land described in petition, and claimed to be absolute owner thereof; that said John Dean, on said first day of 19 April, A. D. 1836, filed his bill in equity, in the circuit court of said Washington County, for the purpose of quieting his title to said land and of setting aside and having decreed as fraudulent and void a certain deed bearing date the 15th day of February, 1820, executed by Moses Austin and wife and recorded in the office of the recorder of deeds for Washington County, in the State of Missouri, in book A, on page 454, whereby said Austin purported to convey to one James Bryan and Levi and Rufus Pettibone the premises aforesaid, that said deed is the same under which plaintiffs claim title to the premises described in their petition herein; that the plaintiffs herein were defendants in said bill; that on the 30th day of November, 1836, a final decree was entered in said cause, vesting in said Dean all interest and estate claimed by the plaintiffs herein to said land.

These defendants say that said plaintiffs are by said decree estopped from maintaining this action or claiming under said deed any interest or estate in the said land adverse to these defendants.

And having answered as aforesaid the defendants ask to be hence discharged and for their costs of suit.

DONOVAN & CONROY,
For said Def'ts.

20 And afterwards, to wit, on March 20th, 1878, there was filed the following replication, to wit:

Replication.

In the circuit court of the United States for the eastern district of Missouri.

WM. J. BRYAN ET AL., PL'FF',
vs.
FERD. B. KENNETT ET AL., DEF'TS.

And now come the pl'ffs, & for replication to the matters set up in defendants' answer as a defense, deny each and every material allegation in said answer that is set up as defense to the plaintiffs' suit, and ask for judgment.

By D. T. JEWETT, *Att'y for Pl'ffs.*

And afterwards, to wit, on March 25th, 1878, the following further proceedings were had and appear of record in said cause, to wit.

Order on def'ts to produce certain deeds.

WILLIAM J. BRYAN ET AL., PLAINTIFFS,
vs. 830.
F. B. KENNETT ET AL., DEFENDANTS.

Now come the plaintiffs by their attorney, D. T. Jewett, esquire, and on motion it is ordered that the defendants forthwith file the deeds mentioned and set forth in their abstract of title heretofore filed herein. It is further ordered that a certified copy of this order be served on said defendants or their attorneys of record, Messrs. Donovan and Conroy.

21 And afterwards, to wit, on March 27th, 1878, the following further proceedings were had and appear of record in said cause, to wit:

Case called.—Jury sworn.

WILLIAM J. BRYAN ET AL., PLAINTIFFS,
vs. 830.
FERDINAND B. KENNETT ET AL., DEFENDANTS.

Now come the parties by their respective attorneys, the plaintiffs by D. T. Jewett, esquire, and the defendants by Messrs. Donovan and Conroy, and this case being regularly called for trial, and both parties being ready, it is ordered that a jury come, and thereupon come said jury, to wit: E. A. Manny, T. M. Rhea, T. J. Lycan, Luther Armstrong, Israel Duty, August Boss, G. B. Hitch, William J. Gates, Robert C. Matthews, Elmer Cunningham, Frank Davis, and Joseph F. Lindsay, twelve good and lawful men, who were duly empaneled and sworn to well and truly try the issues joined herein, and the proceedings in this cause not being concluded at the hour of adjournment, it is ordered that the same be continued until to-morrow morning.

And afterwards, to wit, on March 28th, 1878, the following further proceedings were had in said cause, to wit:

Case farther heard.

WILLIAM J. BRYAN ET AL., PLAINTIFFS,
vs. 830.
F. B. KENNETT ET AL., DEFENDANTS.

Now again come the said parties by their attorneys, and also come the jury as on yesterday, and this cause was proceeded with, but not 22 being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, on March 29th, 1878, the following further proceedings were had in said cause, to wit:

Verdict and judgment.

William J. Bryan et al., plaintiffs,
vs. } 830.
Ferdinand B. Kennett et al., defendants.

Now again come the parties by their respective attorneys, the plaintiffs by D. T. Jewett, esquire, and the defendants by Messrs. Donovan and Conroy; and also come the jury as on yesterday, to wit, E. A. Manny, T. M. Rhea, T. J. Lycan, Luther Armstrong, Israel Duty, August Boss, G. B. Hitch, Wm. J. Gates, Robert C. Matthews, Elmer Cunningham, Frank Davis, and Joseph F. Lindsay, who, after hearing the evidence and arguments of counsel and receiving the charge of the court, return into court the following verdict, to wit: "We, the jury, find for the defendants. (Signed) E. A. Manny, foreman."

It is therefore considered by the court that the plaintiffs, Wm. J. Bryan, Moses A. Bryan, and Guy M. Bryan, take nothing by their writ herein; that the said defendants, Ferdinand B. Kennett, John Teasdale, Charles H. Mallory, and Fannie Mallory, his wife, Margaret Dean, and Annie G. Dean, go hence without day, and have and recover against said plaintiffs their costs in this behalf expended and have thereof execution.

23 And afterwards, to wit, on April 2nd, the plaintiffs filed the following motion for a new trial, to wit:

Motion for a new trial.

In the United States circuit court, eastern dis. of Missouri, March T, 1878.

Wm. J. Bryan & als., pl'ffs,
vs.
F. B. Kennett & als., def'ts.

And now come the plaintiffs and move the court to set aside the verdict rendered for the defendant, and to grant the plaintiffs a new trial, for the following reasons:

1st. Because the court erred & gave illegal & improper instructions to the jury.

2nd. Because the court excluded legal & proper evidence offered by the plaintiffs.

3rd. Because the court admitted illegal & improper evidence offered by def'ts and objected to by pl'ffs.

4th. Because the court instructed to find for the def'ts when they should have been instructed to find for pl'ffs.

D. T. JEWETT,
Att'y for Pl'ffs.

And afterwards, to wit, on April 30th, 1878, the following further proceedings were had in said cause, to wit:

William J. Bryan et al., plaintiffs, *vs.* Ferdinand B. Kennett et al., defendants. } 830.

Motion for new trial overruled.

24 Now come the parties by their attorneys, and the court having considered the motion for a new trial herein, and being fully advised thereof, orders that said motion be, and the same is hereby, overruled.

And afterwards, to wit, on May 18th, 1878, the following further proceedings were had in said cause, to wit:

Bill of exceptions filed.

William J. Bryan et al., plaintiffs, *vs.* Ferdinand B. Kennett et al., defendants. } 830.

Now come the plaintiffs by their attorneys, and present their bill of exceptions to the court, which said bill of exceptions is signed, allowed, and ordered to be filed as a part of the record herein.

And afterwards, to wit, on December 29th, 1879, the following further proceedings were had in said cause, to wit:

Writ of error, citation, & bond filed.

William J. Bryan et al., plaintiffs, *vs.* Ferdinand B. Kennett et al., defendants. } 830.

Now come the plaintiffs by their attorney and present to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said defendants to be and appear at a Supreme Court of the United States at the next term thereof, on the second Monday of October next, which said writ of error is allowed, and said citation signed by the judge; and said plaintiffs also present to the court their bond in the penal sum of five hundred dollars, which bond is approved and ordered to be filed as a part of the record herein. 25

Which said bill of exceptions filed as aforesaid is in words and figures following, to wit:

Bill of exceptions.

In the United States circuit court, eastern dist. of Mo.

William J. Bryan et al., pl'ffs, *vs.* F. B. Kennett et al., def'ts. } Bill of exceptions.

Be it remembered that on the trial of this cause the plaintiffs offered in evidence the following deeds, &c., to wit:

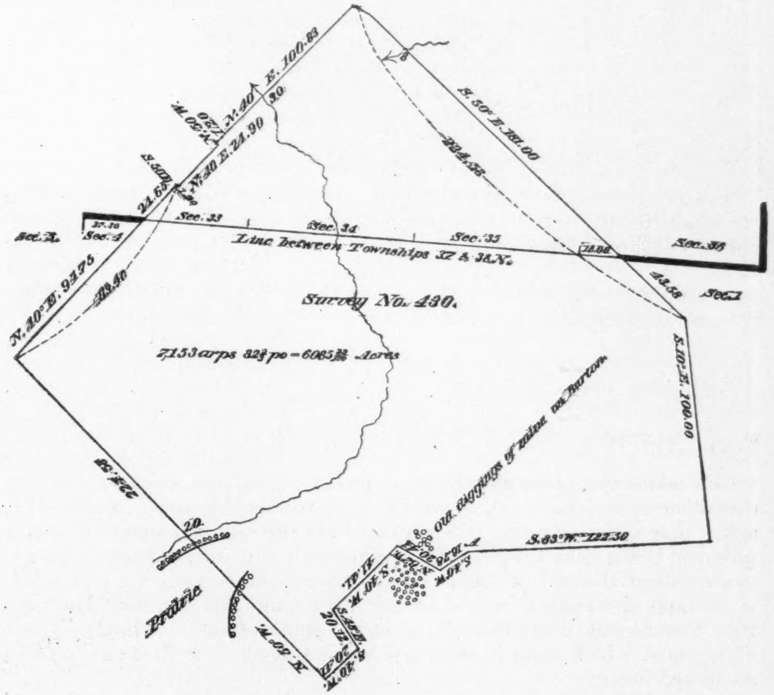
Certified copy of United States survey number 430, dated Aug. 14 & 15, 1817, for 7,153 arpents, in name of Moses Austin, as follows:

Which said copy of survey is as follows, to wit:

(Here follows diagram marked page 26.)

26 *Certified copy U. S. survey No. 430, dated Aug. 14 & 15, 1877.*

BRYAN ET AL.
v. } No. 137. Page 26.
KENNETT ET AL.



OFFICE REGISTER OF LANDS,
Jefferson City, Mo., Sep. 24th, 1877.

I, James E. McHenry, register of lands for the State of Missouri, do hereby certify the foregoing to be a correct copy of survey No. 430, as the same appears of record in my office in record-book C, page 106, and it also appears from said record that said survey was executed on the 14th and 15th days of August, 1817, by William H. Ashley, D. S.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this 24th day of September, 1877.

[SEAL.] JAS. E. McHENRY,
Register of Lands.

27 Certified copy of deed from Moses Austin to James Bryan et al., conveying to him one undivided half part of the claim of 7,153 arpents, being the same known as U. S. survey number 430, as follows:

28 This deed, made this fifteenth day of February, in the year of our Lord one thousand eight hundred and twenty, between Moses Austin, of Herculaneum, in the county of Jefferson & Territory of Missouri, and Mary, his wife, of the one part, and James Bryan, and Levi Pettibone, and Rufus Pettibone, of the other part, witnesseth:

That the said Moses Austin & Mary Austin, for and in consideration of twenty-one thousand dollars to them in hand paid, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, & sold, and by these presents do grant, bargain, and sell, unto the said James Bryan, Levi Pettibone, and Rufus Pettibone, their heirs and assigns forever, the whole of that certain tract of land heretofore granted to the said Moses Austin by the Spanish Government and confirmed to him by the Government of the United States, containing seven thousand one hundred & sixty arpens, and being one league square, situated at and near the Mine à Burton, in the county of Washington and Territory aforesaid, being the only concession from the Spanish Government to the said Moses Austin, and it is the intention of the said Moses Austin and Mary Austin to convey by these presents to the said James Bryan, Levi Pettibone, & Rufus Pettibone, their heirs and assigns, the whole of the said tract except such parcels thereof as the said Moses has heretofore sold and conveyed,
29 and are hereafter excepted, to wit: To John Riel Jones, fourteen hundred and thirty-two arpens; to the county of Washington, forty-five arpents; to a Mr. Perry, two hundred and sixteen arpens; to a Mr. Ruggles, two hundred and forty-three arpens; to Mr. McGready, fifty-eight arpens; to John Buckey, sixty-six arpens; to John Buckey, sen'r, four arpens; to Mr. Fecklin, three hundred and twenty-four arpents; to Mr. McCormack, forty-five arpens; to Mr. Brock, one hundred arpens; which said several pieces of land above named and excepted are severally described in the deeds and contracts to the said purchasers for the same; and, further, the said Moses Austin will not warrant and defend the said premises hereby against the following judgments and mortgage, to wit:

One judgment in favor of the Bank of St. Louis, against the said Moses Austin, obtained in the superior court of the said Territory, for about fourteen thousand dollars; three judgments in favor of the estate of one Gamble, in Virginia, against the said Moses Austin, rendered in the said superior court, for one thousand and twenty-nine dollars each, or thereabouts; and one judgment in favor Alexander McNair, against the said Moses Austin, in the said superior court, for about four hundred and fifty dollars; and one mortgage in favor of the Bank of St. Louis,
30 upon a *a* part of the said tract, executed by the said Moses Austin to secure the payment of about twelve thousand dollars, which is, however, the same debt for which the judgment above mentioned in favor of the Bank of St. Louis has been obtained, and in included in that judgment; but as against the said judgments and mortgage the said James, Levi, and Rufus agree to take the said premises hereby conveyed at their own risk and hazzard, without recourse to the said Moses Austin: To have & to hold the said premises above described and conveyed, with all the rights, privileges, and appurtenances thereunto belonging or in any wise

appertaining, unto them, the said James Bryan, Levi Pettibone, & Rufus Pettibone, as tenants in common, the said James Bryan to have and to hold an undivided half of the said premises, and the said Levi Pettibone and Rufus Pettibone to have and to hold an undivided fourth part each of the said premises, and to the sole and only proper use, benefit, and behoof of the said James Bryan, Levi Pettibone, and Rufus Pettibone, their heirs and assigns forever.

In testimony whereof the said Moses Austin & Mary Austin have hereunto set their hands and seals the day and year first above written.

MOSES AUSTIN. [SEAL.]
MARY AUSTIN. [SEAL.]

Signed & delivered in presence of—
SAM. WOODSON.

TERRITORY OF MISSOURI,
County of Jefferson:

31 This day personally appeared before me, the clerk of the circuit court within and for the county of Jefferson, the above-named Moses Austin and Mary Austin, his wife, and acknowledged the foregoing deed or instrument in writing to be their acts and deeds, hands and seals, for the purposes therein mentioned. And the said Mary being by me separate and apart from her said husband examined, and being acquainted with the contents thereof, says she executed the same freely and voluntarily, without the compulsion or undue influence of her husband.

Given under my hand and private seal, having no seal of office, this fifteenth day of February, eighteen hundred and twenty.

SAM. WOODSON, *Clerk.*

Recorded, bearing date February the 29th, 1820.

JOHN BREKEY, *Recorder.*

STATE OF MISSOURI,
County of Washington:

I, Andrew F. Casey, clerk of the circuit court and ex officio recorder within and for the county and State aforesaid, do hereby certify that the above and foregoing is a full, true, & complete copy of the record of deed from Moses Austin and Mary Austin to James Bryan, Levi Pettibone, and Rufus Pettibone, as fully as the same appears of record in book A, page 454, of deeds, in my office.

Witness my hand as clerk and ex officio recorder, and the seal of our said court affixed, at office, this 5th day of June, A. D. 1875.

[SEAL.] ANDREW F. CASEY,
Clerk & Recorder.

32 Also deposition of Guy M. Bryan, one of the plaintiffs, as follows:

Deposition of Guy M. Bryan.

Notice to take depositions (Wagner's Statutes, page 523, sec. 9; page 524, sec's 10–13).

In the circuit court of the United States, eastern district of the State of Missouri.

WM. J. BRYAN & ALS., PLAINTIFFS,
against
F. B. KENNETT & AL., DEFENDANTS.

To the above-named defendants, or Donovan & Conroy, their att'ys:

You are hereby notified that depositions of witnesses, viz, Guy M. Bryan and Wm. J. Bryan, to be read in evidence in the above-entitled cause on the part of the plaintiffs, will be taken at the office of Ballinger, Jack & Nott, att'ys at law, in the city of Galveston, State of Texas, on the seventh day of March, 1878, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day at the same place and between the same hours until completed.

D. T. JEWETT,
Att'y for Pl'ffs.

Service of the above notice is hereby acknowledged and issue of dedimus waived.

DONOVAN & CONROY,
For Def'ts.

33 In the circuit court of the United States, eastern district of Missouri.

WM. J. BRYAN & ALS.
vs.
F. B. KENNETT & ALS.

Be it remembered that I, Alexander Sampson, a notary public in and for the county of Galveston and State of Texas, duly commissioned and qualified as such, certify that by virtue of the notice to take depositions in the above cause, hereto annexed and made part of this return, marked "A," in the city and county of Galveston, Texas, on the 7th day of March, 1878, at the hour of 11 o'clock a. m. on said day, GUY M. BRYAN, one of the witnesses named in said notice, came before me, at the office of Ballenger, Jack & Mott, att'ys at law, and thereupon the said Bryan was first carefully cautioned and sworn by me to testify the whole truth in the above cause in the caption mentioned, & was carefully examined by me, and thereupon he did dispose and testify as follows:

I am one of the plaintiffs in the above-entitled cause; my residence is in Galveston, Texas; I am an agriculturist; I was admitted to the bar, but never practiced; I resided in Potosi, Missouri, for several years preceding my removal to Texas in the spring of 1831. At that time my mother

& stepfather emigrated to Texas, where I have had my citizenship ever
since. The family record as kept in the family Bible shows, as I
34 myself know in every way that a son could know such facts, that my
mother's maiden name was Emily M. Austin & my father's name
was James Bryan. My father died on July 16th 1822, at Herculaneum,
Missouri, where he was buried. My mother had five children by my father:
Stephen Austin, born July 16th, 1814, who died the following month;
William Joel Bryan, born Dec. 14th, 1815; Moses Austin Bryan, born Sept.
25th, 1817, both at Hazel Run, Mo.; Guy Bryan, born Jan. 12th, 1821, at
Herculaneum, & Mary Elizabeth Bryan, born July 5th, 1822, at the same
place, & died in Brazoria County, Texas, in 1833, & never married. The
others are now living in Texas. My mother was married to Jas. F. Perry
23d Sept., 1824, & had the following children by him: Stephen Samuel,
Emily Rosannah, Eliza Margaret, Edith, & Henry Austin. Emily & Edith
died infants; Eliza and Henry died without marriage; Stephen Samuel died
about three years since, leaving a wife & six children; Henry died after
his mother & one day before his father; the minors died before their parents;
Stephen & Eliza survived their mother & father; my mother died
in 1852, & my stepfather (Mr. Perry) in the following year. My mother
was the daughter of Moses Austin, who resided at Potosi, Washington
County, Mo., & who was the Moses Austin who lived at Durham
35 Hall (so called) at Potosi, & claimed, under a Spanish grant, the
Mine on Burton, as I am informed by my mother & the family
record, by family tradition, & the history of the times & of the Austin
family. I have no recollection of my father or of Moses Austin, but I
remember Durham Hall well, as it was standing when I left Mo. (& was
the notable house of the town of Potosi), when I was ten years of age. I
have in my possession now the original records from the family Bible, the
marriages & deaths of my grandfather & grandmother Austin, of my
father & mother & other younger members of the family. My mother's
children & their descendants are the only living descendants of Moses
Austin, who left Missouri about the 1st of May, 1820, for the province of
Texas, & returned to Herculaneum in March, 1821, with health destroyed
from his long & exhausting trip. He died at my father's, on Hazel Run, Mo.,
10th June, 1821, in his fifty-seventh year. He & my father had been connected
in business. As appears from the records in my possession, my father
& mother were married on the 31st of August, 1813, at Mine au Burton,
Washington County, Missouri, as shown by the family birth records.

GUY M. BRYAN.

36 U. S. C. court, eastern district of Missouri.

WM. J. BRYAN & AL., PL'FFS,
vs.
F. B. KENNETT & AL., DEF'TS.

And I, the said Alexander Sampson, a notary public, duly qualified in, & for the county of Galveston and State of Texas, certify that on the date aforesaid, the 7th day of March, 1878, I was attended by the said witness, Guy M. Bryan, at the office of Ballinger, Jack & Mott, attorneys at law,

in the city of Galveston, at the hour of 11 o'clock a. m., and after being carefully cautioned and sworn by me to testify the whole truth in the said suit in the caption mentioned, and carefully examined, he did depose and testify as above set forth; that his said examination was then and there reduced to writing by him in my presence, and after being read over to and approved by him he signed the same in my presence. I further certify that the said witness, Guy M. Bryan, resides in the city of Galveston, Texas, more than one hundred miles from the place of trial of said suit; that none of the defendants nor any att'y for them, or either of them, was present at said examination; and that the other witness the notice named, Wm. J. Bryan, was not produced before me, and did not attend for examination. I have retained the said deposition for the purpose of
sealing up and addressing them, together with said notice, to the
37 court for which the same were taken.

I further certify that I am not of counsel or attorney or agent for any of the parties to this suit, nor related to any of them, nor anywise interested therein.

In testimony whereof I have hereto set my hand and affix my seal of office, at Galveston, in the county of Galveston and State of Texas, this 7th day of March, A. D. 1878.

[SEAL.] ALEXANDER SAMPSON,
Notary Public for Galveston County, Texas.

Act of Congress of February 14th, 1874, conveying interest of United States in said survey to the assigns and legal representatives of Moses Austin, as follows:

Act of Congress of Feb'y 14*th*, 1874, *conveying interest of U. S. in certain land, &c.*

CHAP. 29.—An act to confirm certain land titles in the State of Missouri.

Whereas the Baron of Carondelet, governor-general of the Territory of Louisiana, did on the fifteenth day of March, anno Domini seventeen hundred and ninety-seven, instruct Zeno Trudeau, lieutenant-governor of said Territory, to place Moses Austin in possession of a league square of land at Mine à Breton, in said Territory; and

Whereas the said Moses Austin did, in the year anno Domini seventeen
hundred and ninety-eight, take possession of the said land by mov-
38 ing upon it with his family, and did improve the same by building
dwelling-house, blacksmith shop, furnace, and other improvements;
and

Whereas the said lieutenant-governor did, on the fourteenth day of January, seventeen hundred and ninety-nine, order Antone Lulard, surveyor in said Territory, to survey the said land and put the said Austin legally in possession of the same, which survey, numbered fifty-two, containing seven thousand one hundred and fifty-three arpents and three and two-thirds feet, was executed by said Antone Lulard, and a certificate of the same filed by him in November, anno Domini eighteen hundred; and

Whereas Don John Ventara Morales, then governor at New Orleans, did, in the year of our Lord eighteen hundred and two, in the name of the

King of Spain, grant to the said Moses Austin the land so surveyed and located: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States hereby release whatever title they have to said lands now numbered four hundred and thirty on the plat in the surveyor-general's office, and in townships thirty-seven and thirty-eight, range two east, in the county of Washington and State of Missouri, containing seven thousand 39 one hundred and fifty-three and thirty-two one-hundredths arpents (six thousand eighty-five and twenty-nine one-hundredths-acres), to the heirs, legal representatives, or assigns of said Moses Austin, according to their respective interests therein: Provided, however, that this act shall not affect nor impair the title which any settler or other person may have acquired adverse to the title of said Moses Austin to any portion of said land.

Approved February 14th, 1874.

Plaintiff here rested.

Defendants then offered in evidence duly certified copy of order of Baron de Carondelet, dated Mar. 15th, 1797, to Zenon Trudeau, proceeding under said order.

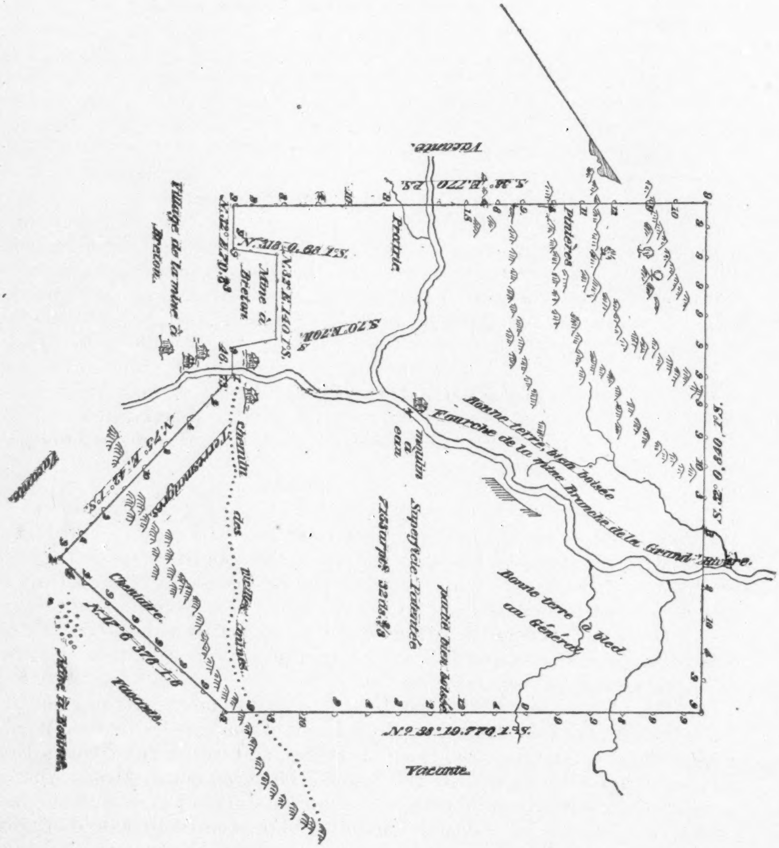
This paper could not be found in the files of this court, and the defendants' attorney and the plaintiffs' attorney have been called upon for the same, and they both say that they have not got it and do not know where it is and cannot produce it.

M. M. PRICE, *Clerk*,
By T. L. CRAWFORD, *D. C.*

(Here follows diagram marked page 40.)

40 BRYAN ET AL. *v.* KENNETT ET AL. } No. 137. Page 40.

No. 32. D'n Moises Austin.



Calcul de la superficie grand quarre..........................	6, 468 arps.	
Triangle..	790	62⅔
	7, 258	62⅔
A retrancher la trappèze de la Mine à Breton..............	105	30
	7, 153	32⅔

NOTA.

1. Corner de pierres ayant pour témoins une slagne de plomb marquée M A.
2. Piquets.
3. Chêne blanc.
4. Noyer dur.
5. Cerisier sauvage.
6. Bois inconnu.
7. Noyer taudre.
8. Chêne rouge.
9. Espèce de chêne appellé chêne à pieux partes Américains, tous marqués M A.
10. Chêne noir.
11. Pin.
12. Olivier sauvage.

Arpentée le 2 de juin, 1800, en présence de Dr. Sxan'r Vallé, cap'ne de milice, com'd'te de poste de Ste. Génévièvе, et en vertu des crêt de M'rs les l'ates governement, comme il suit:

1. Du g'nt geur D'n Zenon Tradeau, du 14 janvier, '99.
2d. Du g'nt geur D'n Cantos Dabault Delassus, du 3 février, 1800.
3d. Du même en datte du 24 9bre, 1800, pour ce qui conserne l'expedition du certificat.

D'arpentage délivré par nous le 28 du courante, même année.

Tous les arb'es dans les lignes sont marqués. Située à environ 30 milles dans 9' ouest du village de Ste. Génévièvе.

41 Office register of lands, State of Missouri.

I, Jas. E. McHenery, register of lands for the State of Missouri, certify the foregoing to be a correct copy of the plat of survey No. 52, containing 7,153 arps. 32⅔ p's, in the right of Moses Austin, as the same appears of record in first part of registre d'arpentage, page 85, Soulard's surveys, together with the field-notes of the same, now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this 21st day of March, 1878.

JAS. E. McHENRY,
Register of Lands.

Sale of valuable real estate.

By virtue of an order of the county court of St. Louis County, Missouri, I will sell at public vendue or outcry, at the door of the court-house of the county of Washington, in this State, on the second day of the sitting of the circuit court of Washington County, at the next March term of said circuit court, and during the sitting of said court, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, the following-described real estate, to wit:

A tract of land containing about one league square (excepting several *several* smaller tracts heretofore legally sold out of the same), situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton, and originally granted by the Spanish Government to Moses Austin. The terms of sale are one-fourth of the purchase-money cash and the balance on a credit of six and twelve months, to be secured by a deed of trust on the premises. This tract of land was selected by Moses Austin, during the existence of the Spanish Government in Louisiana, for its richness in lead ore, and there has been lead mines opened and extensively worked on it for many years. It is believed that no tract of land in the mining district of this State presents stronger inducements to the investment of capital than the one now offered for sale. The court at which the sale is to be made commences its term on the second Monday of March next.

Nov. 19th, 1833.

WILLIAM SAVAGE,
Administrator of Louis Devotion, dec'd.

42 *Copy of record of grant by one Venturo Morales to Moses Austin.*

Moses Austin, claiming 7,153 arpens of land. Testimony taken October 12, 1808.

Elias Bates, sworn, says that a Mr. Kendal and himself took possession of the land claimed for claimants the 5th of April, 1798, and commenced immediately after to get timber, furnace-house, and mills, and made brick for the building of a furnace; also built cabins. Claimant arrived in this country with his family about the first of September, same year, and came out to the land claimed in October, same year. Furnace-house was completed same year, and the furnace was completed in January following, and was put in blast about that time. A saw-mill was completed in the summer of 1799, and went in operation; a dwelling-house was completed in June, 1799, and claimant moved in it; also in the summer of 1799 claimant completed a blacksmith shop, shot factory, and other outbuildings. Claimant has, ever since his first establishment, continued to inhabit and cultivate the land claimed to this day. Claimant had himself in cultivation in 1802 about forty-five acres. Witness was a tenant of claimant in 1802; had fifteen acres in cultivation on said tract in 1805; claimant had himself in cultivation about sixty-eight acres. Witness says that in the year 1800 he made a conditional bargain with claimant for the land cultivated by him, but the bargain has not yet been completed. In 1805 he (witness) had 30 acres in cultivation on the land claimed.

43 Question. (By agent of the United States.) When did you begin to cultivate the place alluded to?

Answer. In 1800.

Q. (By the same.) Did you then cultivate the land for yourself or claimant?

A. That he then cultivated under the expectation of making an exchange for the same with claimant.

Q. (By the same.) When was your bargain made?

A. It was a mere memorandum of agreement made between the 20' and 30' March, 1801. Says that his object for going on the land cultivated by him was that he diden't think it prudent to move on a claim of his own, it being a remote situation about six miles from the land claimed, and about the same distance from any settlement, and at that time considered dangerous on account of Indians. Says that he was to give claimant an equal quantity of land if he obtained it out of his own claim, or land equally valuable elsewhere. One Goforth, as a tenant of claimant, in 1803 cultivated about four acres and built a house. Claimant built a foot-bridge over a creek, always fordable, on a public road leading through the land claimed, between the years 1801 and 1803, for the accom'odation of foot passengers, said bridge being about 6 feet wide, 10 feet high, and between 60 and 80 feet long, with railing at the sides; also two other bridges in the streets of Mine à Breton across ditches claimant had dug to convey water.

44 Q. (By claimant.) What has been the chief object of your pursuits from 1799 to this day?

A. The manufacturing of lead and shot extensively, and since 1800 yearly to the amount of from one to two hundred thousand pounds.

WILLIAM BATES, sworn, says that in the fall or winter of 1799 claimant had also a grist-mill on the land claimed, which then went into operation, and has continued so ever since. In the year 1800 or 1801 the road leading from the Mine à Breton to the old mines, through claimant's land, was partly opened and improved by claimant, and that the same has ever since been used as a public road, and is the only public road in that direction. Claimant also opened another road by his mills leading to the Mine à Renault. Witness says that from the year 1802 to the present day claimant has had employed at eight different diggings and at his furnace, at various times, an average of from forty to sixty hands laboring on the land claimed yearly.

Don John Bonaventure Morales, treasurer of armies, intend*e*nt interim of the royal finances of the provinces of Louisiana and Western Florida, superintend*a*nt subdelegate, judge of arrivals, of lands, and King's domain.

Whereas Francis Merieult made application in this tribunal, as attorney of Moses Austin, an inhabitant of Illinois, demanding in
45 behalf of said Austin the title of 7,153 arpens 32⅔ feet of land in
superficie, by virtue of an official letter from the Baron of Carondelet, late governor-general of this province, dated March 15th, 1797, directed to Don Zenon Trudeau, lieutenant-governor of St. Louis, of Illinois, in order to grant him a league square in this place called Mine à Breton, the said lieutenant-governor, on the 14th of January, 1799, ordered the surveyor, Don Anthony Soulard, to put him in possession of said land on the mentioned place, Mine à Breton, which he effectually executed according to said order, proceeding to the measurement, lines, and survey of said land of which said Austin was in possession of, the corresponding plat of survey amounting in the whole to the above-mentioned 7,153 arpens 32⅔ feet in superficie, which was presented, with the documents corresponding to it. I ordered the same to be presented to the attorney-general of the royal finances, in the result of which he inquired the notice of said Soulard; and as it was replied, according to the pretensions of the party interested, by an instrument dated the 2d inst., disposing that a little in form of said land mentioned in the plat presented should be despatched, I, in consequence of which and making use of the faculty vested in this intendancy, in the name of our lord the King (God may preserve), do grant
unto the said-named Moses Austin complete property, use, and do-
46 main of the aforesaid 7,153 arpens 32⅔ feet of land in superficie,
according to the results of figures and measures contained in the plat of survey drawn by said Soulard under the rhumbs, lines, dimensions, and contiguousness of the land of the king's domain, on the four sides marked in said plat under No. 52, which is in a summary way for that purpose, the said land being situate fifty miles, more or less, west of St. Genevieve, adjoining on the southeast, besides what is above mentioned, to the Mine and Villiage à Breton, for the purposes that he might dispose of the said land as he pleases and as his own property, giving him power to continue in the possession of which he was and is now, or claim it of this tribunal if he is troubled by any one else in its possession, and in which I do now place him and protect him, without any prejudice of a

third that might have a better right under the quality and condition that as much the said Austin as his heirs on the land granted, without any interest nor contribution whatever in favor of the royal finances have to comply with what is included on the 3rd, 4th, 6th, 7th, & 9th articles of the instruction for land, made and published by this intendancy on the 17th of July, 1799, of which they have to take cognizance in order not to allege ignorance.

In conformity of which I have ordered the present to be delivered,
signed with my hand, sealed with my seal of arms, and countersigned
47 by the undersigned secretary of the royal finances, who with the
treasurer principal is to take cognizance of what is disposed of.

Given at New Orleans, July the 5th, 1802.

JOHN VENTURA MARALES.

New Orleans, *July 9th*, 1802.

Cognizance has been taken of the above title 96, and following of the record of my charge.

PIMEMES.

New Orleans, *July 5th*, 1802.

Cognizance has been taken in the royal treasury of my charge of the above title 136, rec'ts of the book kept for that purpose.

MANUEL ORMIREZ.

Gelberto Leonard.

St. Louis, *July 17th*, 1806.

I do hereby certify the above truly translated from the record of the recorder of the land title.

M. P. LE DUC,
Translator to the B. of C. dist., Lou.

(All the last above objected to by plaintiffs as void under the laws of the United States, & irrelevant. Objection overruled, to which the plaintiff then and there excepted.)

48 *Claim of Moses Austin.*

Claim of Moses Austin for 7,153 arpents, recorded by U. S. record of land titles, as follows:

Moses Austin, claiming seven thousand one hundred and fifty-three arpents thirty-two and two-thirds feet of land, situate adjoining Mine à Breton, district of St. Genevieve, produces to the board a grant for the same from Don Juan Ventura Morales, intendant of Louisiana, dated 25th of July, 1802, and is found on "the abstract of all the concessions and patented grants of lands appertaining to the district of Louisiana, recorded in the registers kept by the Spanish and French governments of the province of Louisiana since the 2d July, 1756, until the 23d of April, 1802," transmitted to this board by the Secretary of the Treasury; which grant the intendant declares to be founded on an official letter from the Baron de Carondelet to Zenon Trudeau, lieutenant-governor, dated March 15, 1797, ordering the said Zenon Trudeau to grant one league square,

and an order of survey from said Zenon Trudeau, dated 14th of January, 1799, declaration of its having been surveyed by Antoine Soulard and registered in the book of surveys No. 52, and a declaration on the part of said Antoine Soulard that the land was occupied by claimant at the time of survey, granted on condition that claimant shall comply with the third, fourth, sixth, seventh, and ninth articles of the ordinances of
49 his intendancy, dated 17th July, 1799.

50 *Mortgage by Moses Austin to Bank of St. Louis.*

This deed, made this eleventh day of March, in the year of our Lord one thousand eight hundred and eighteen, witnesseth: That Moses Austin, of the town and county of St. Louis, in the Territory of Missouri, for and in consideration of fifteen thousand dollars to him in hand paid by the president, director, and company of the Bank of St. Louis, the receipt whereof he doth hereby acknowledge, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said president, directors, and company of the Bank of St. Louis, and their successors in office forever, a certain tract of land situate at the village of Potosi and Mine á Burton, in the county of Washington and Territory of Missouri aforesaid, and bounded as follows: Beginning at the corner of the Mine á Burton surveys, called, in the front of the late dwelling of the said Moses Austin, known by the name of Durham Hall; thence running Southwest seventy-two poles, more or less, to the corner of the said Mine á Burton survey; thence with the said survey West-northwest to another corner of the said survey on the citadel; thence Southwest on the said survey to the dividing line between John Rice Jones and the said Moses Austin; thence with that line to the West line of the Mine á Burton survey; thence West-northwest with the last-mentioned line to the lower division line between John Rice Jones and the said Moses
51 Austin near Bates Creek, so called; thence along said line down said creek to the South corner of a tract of land belonging to Elias Bates; thence down the said creek to the Northwest corner of the survey of the said Bates; thence along the line of the said Bates survey to the North corner thereof; thence Northeast, crossing the old mill creek to the Boomslick road; thence up said road, as the same turns, to the North corner of the town plat of Potosi; thence along the boundary-line of the said town of Potosi to the West corner thereof, and to a lot sold Enoch Winds; thence along the boundary line of the said town of Potosi to the South corner thereof; thence to the place of beginning; containing six hundred and forty acres, together with the house called Durham Hall, & all other buildings and improvements, tenements, hereditaments, and appurtenances belonging to the said-described tract of land, excepting therefrom the following lots of land which have been heretofore sold and conveyed, to wit: Twenty-five acres of land to John Rice Jones, one acre to Doctor Israel McGready, half an acre to John S. Brecksy, one acre to Enoch Winds, and about three acres to John Brecksy, senior, and two acres reserved for the said Doctor McGready situate between the lot of John S. Brecksy and that of Enoch Winds.

52 To have and to hold the above described & granted premises, with the appurtenances, unto the president, directors, and company

of the Bank of St. Louis, and their successors in office, to their only use and behoof forever. Provided, however, that this deed is made upon the express condition that whereas the said Moses Austin is indebted to the said president & directors of this Bank of St. Louis in the sum of fifteen thousand dollars or thereabouts, be the same more or less, secured by negotiable notes, subject to renewal according to the rates and regulations of said bank, and to discount:

Now, therefore, be it known that if the said Moses Austin, his heirs or other legal representatives, shall and do well and truly pay and satisfy and discharge all sums of money now due the said president and directors of the said Bank of St. Louis as aforesaid, and all other sums of money which may be by them loaned to him, or he may be liable to pay as security or endorser for other persons or otherwise howsoever, then this deed is to become null and void; otherwise to continue, be, and remain in full force and effect and the above-granted premises to remain mortgaged to secure the payment of all sums now due, or which he may hereafter contract with the said bank, and be liable to be foreclosed and sold according to the statute in such cases made and provided.

53 In witness whereof the said Moses Austin has hereunto set his hand and seal the day and year first above written.

MOSES AUSTIN. [SEAL.]

Signed, sealed, and delivered in presence of—
J. V. GARNIER.
WM. M. OBBURN.

NOTE.—Before signing, in the last line of the first page the word "south" erased.

TERRITORY OF MISSOURI,
County of St. Louis:

Personally appeared before me, the subscriber, a justice of the peace in and for the county aforesaid, Moses Austin, who acknowledges the foregoing instrument of writing to be his act and deed, for the purposes therein mentioned. Given under my hand and seal, at St. Louis, this 11th day of March, 1818.

J. V. GARNIER, *J. P.* [SEAL.]

Recorded, bearing date May 31st, 1818.

JOHN BRECKEY, *Recorder.*

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, recorder in and for said county, do hereby certify that the foregoing is a full, true, and perfect copy of the deed of Moses Austin to the president, directors, and company of the Bank of St. Louis, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Potosi, this 3rd day of June, 1836.

[SEAL.] J. McGREADY, *Recorder.*

54 *Judgment and execution of Bank of St. Louis against Moses Austin.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that heretofore, to wit, on the fifteenth day of February, in the year of our Lord one thousand eight hundred and nineteen, the president, directors, and company of the Bank of St. Louis, by their attorney, filed in the office of the clerk of the superior court for the northern circuit of the then Territory of Missouri, their declaration against Mozes Austin, which said declaration is in the words and figures following, to wit:

NORTHERN CIRCUIT, *sct:*

The president, directors, & company of the Bank of St. Louis, by Geyer, their attorney, complain of Moses Austin of a plea of trespass on the case, for that whereas the said Moses, on the eleventh day of March, in the year of our Lord eighteen hundred and eighteen, at the county of St. Louis, in the Territory of Missouri, and within the jurisdiction of this court, made his certain promissory note in writing, bearing date the same day and year aforesaid, and thereby then and there promised, sixty days after the date thereof, for value received, to pay to the said president, directors, and company of the Bank of St. Louis, or order, seven thousand two hundred and seventy-six dollars and fifty-eight cents, payable at the office of the said plaintiffs, without defalcation and then and there delivered the said note to the said president, directors, and company of the Bank of St. Louis.

55 And whereas also the said Moses, afterwards, to wit, on the same day and year aforesaid, at the county and within the jurisdiction aforesaid made his certain other promsssory note in writing, bearing date the day and year aforesaid, and thereby then and there promised, on the fourteenth day of December then next following, for value received, to pay to the said president, directors, and company of the Bank of St. Louis, or order the further sum of five thousand dollars, payable at the office of the said plaintiffs, without defalcation, and then and there delivered the said note to the said plaintiffs.

And whereas also afterwards, to wit, on the nineteenth day of August, in the year of our Lord eighteen hundred and eighteen, at the county and within the jurisdiction aforesaid, one James Bryan made his certain promissory note in writing, bearing date the day and year last aforesaid, and thereby then and there, sixty days after the date thereof, promised to pay to the said Mozes, or order, seven hundred and eighty-five dollars, payable and negotiable at the Bank of St. Louis, for value received; and the said Mozes afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, to wit, on the day and year last aforesaid at the county aforesaid, by his certain endorsement in writing by the said Moses on the said note made, assigned, the said
56 note and ordered and appointed the contents thereof to be paid to one Elias Bates; and the said Elias Bates afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, to wit, on the day and year aforesaid, at the county aforesaid, made its certain endorsement in writing on the said note and thereby

then and there assigned the same and ordered and appointed the contents thereof to be paid to the said plaintiffs, and then and there delivered the said note so endorsed to the said plaintiffs, whereof the said Mozes then and there had notice.

And the said plaintiffs aver that afterwards, when the said note became due and payable according to the tenor and effect thereof, to wit, on the twenty-first day of October, in the year aforesaid, diligent search was made after the said James Bryan at the Bank of St. Louis aforesaid, to wit, at the county aforesaid, in order that the said last-mentioned note might be presented and shown to the said James for payment thereof, but that the said James could not on such search be found, nor hath he at any time hitherto paid the said sum of money mentioned in the said note to the said plaintiffs.

Of all which said several premises the said Mozes afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice, by means
whereof the said Mozes then and there became liable to pay to the
57 said plaintiffs the said sum of money mentioned in the said note
when he should be thereunto afterwards requested; and, being so liable, he, the said Mozes, in consideration thereof, afterwards, to wit, at the day and year last aforesaid, at the county aforesaid, undertook and then and there faithfully promised the said plaintiffs to pay them the said last-mentioned sum of money when thereunto afterwards requested.

And whereas, also, the said Mozes afterwards, to wit, on the second day of December, in the year of our Lord eighteen hundred and eighteen, at St. Louis, to wit, at the county and within the jurisdiction aforesaid, made his certain other promissory note in writing, bearing date the day and year last aforesaid, and thereby then and there promised, sixty days after the date thereof, to pay to one Israel McGready, by the name and description of J. McGready, or order, the sum of two hundred and fifty dollars, at the Bank of St. Louis, without defalcation, for value received and the said Israel afterwards, and before the payment of the said sum of money mentioned in the said notice, or any part thereof, to wit, on the day and year aforesaid, at the county aforesaid, made his certain endorse-
ment in writing on the said note, and thereby then and there
58 assigned the said note and ordered and appointed the contents
thereof to be paid to the said plaintiffs, and then and there delivered the said note so endorsed to the said plaintiffs, whereof the said Mozes then and there had notice.

And whereas, also, the said Mozes afterwards, to wit, on the third day of February, in the year of our Lord eighteen hundred and nineteen, at the county aforesaid, was indebted to the said plaintiffs in the further sum of fifteen thousand dollars, for money by the said plaintiffs, before that time lent and advanced to and paid, laid out, and expended for the said Mozes, at his special instance and request, and also in the further sum of fifteen thousand dollars for other money by the said Mozes before that time had and received to and for the use of the said plaintiffs; and, being so indebted, he, the said Mozes, in consideration thereof, afterwards to wit, on the day and year last aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said several sums of money in this count mentioned when he should be thereunto afterwards requested.

Nevertheless the said Mozes (although often requested so to do) hath not as yet paid the said several sums of money, nor any or either of 59 them, or any part thereof, to the said plaintiffs, but he so to do hath hitherto altogether neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiffs of twenty thousand dollars and therefore they bring suit, &c.

PEYER, *For Pl'ff.*

And afterwards, to wit, on the fifteenth day of February, in the year aforesaid, the clerk of the said superior court issued a writ of capias in the words and figures following, to wit:

TERRITORY OF MISSOURI,
Northern Circuit, ss:

The United States of America, to the sheriff of the county of Jefferson, greeting:

You are commanded that you take Moses Austin, if he be found within your bailiwick or county, and him safely keep, so that you have his body before the judges of our superior court of our Territory of Missouri, at our said superior court to be held in and for the northern circuit, at the town of St. Louis, on the fourth Monday of April next, then and there, in our said court, before the judges of our said court, to answer unto the president, directors, and company of the town of St. Louis in a plea of trespass on the case to their damage twenty thousand dollars; and have you then and there this writ.

Witness the honorable Silas Bent, esquire, presiding judge of our said court, at St. Louis, this fifteenth day of February, in the year of our Lord one thousand eight hundred and nineteen, and of our Independence the forty-third.

[SEAL.] J. V. GARNIER,
Cl'k S. C. N. C.

And on the said capias is an endorsement in the words and fig- 60 ures following, to wit:

This is an action founded on several promissory notes to recover of the defendant the amount of the said notes.

The sheriff of the county of Jefferson will take bail of the said defendant in the sum of fourteen thousand dollars.

J. V. GARNIER,
Cl'k S. C. N. C.

And the said writ was returned with the following endorsement thereon, namely:

Executed March 20th, and bail bond taken.

A. SCOTT, *Sh'ff J. C.*

And afterwards, to wit, on the twenty-ninth day of April, in the year eighteen hundred and nineteen, come the said defendant, by his attorney, and filed his plea in the words and figures following, viz:

And the said defendant, by Hempstead, his att'y, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the aforesaid plaintiff hath thereof above complained against him, said defendant, in the declaration of said plaintiffs; and of this he puts himself upon the country, &c.

HEMPSTEAD, *For D'f't.*

And afterwards, to wit, at the September term of the said superior court for the northern circuit of the Territory aforesaid, in the year eighteen hundred and nineteen, on the first day of October of said year, come the parties aforesaid, by their attorneys, and neither of the said parties requiring a jury, but this case, with all things touching the same, being by them submitted to the court, and all and singular the premises being by the said court here seen and fully understood, and mature delib-
61 eration thereupon had, for that it appears to the said court, before the judges of the said court, that the said Moses Austin did not undertake in manner and form as the said president, directors, and company of the Bank of St. Louis have above in the third account of their said declaration against him complained against him, therefore it is considered by the said court that the said plaintiffs take nothing by said account, but be in mercy for their false clamor.

And for that it furthermore appears to the said court, before the judges of the said court, that the said Mozes Austin did undertake and promise in manner and form as the said plaintiffs have above in the first, second, fourth, and fifth accounts of their said declaration complained against him, and they assess the damages of the said plaintiffs by reason of the premises at fourteen thousand and one dollar and eighty-five ¼ cents, therefore it is considered by the court, before the judges of the said court, that the said plaintiffs recover against the said Mozes Austin the damages aforesaid, in form aforesaid assessed, together with their costs and charges by them about their suit in this behalf laid out and expended; and the said Moses Austin in mercy, &c.

STATE OF MISSOURI,
County of Saint Louis, ss:

I, John Ruland, clerk of the circuit court for the county of St. Louis, and ex officio clerk of the Supreme Court for the third judicial district of the State of Missouri, do certify the foregoing to be a correct tran-
62 script of the record and proceedings in the case of the president, directors, and company of the Bank of St. Louis against Moses Austin, as the same remains in my office; and I do further certify that it appears from the execution docket of said court that an execution issued upon the judgment aforesaid, returnable to the April term of the superior court for the northern circuit, in the year eighteen hundred and twenty, upon which execution there was made the sum of \$6,783.05½, the said execution being directed to the county of Washington, and which original execution cannot be found in said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at office, in the city of St. Louis, county and State aforesaid, this second day of April, in the year of our Lord one thousand eight hundred and thirty-six.

[SEAL.] JNO. RULAND, *Clerk.*

(Copy of execution objected to by plaintiffs, because it contained neither testimonium nor seal of court, nor even scrawl. Objection overruled, to which the plaintiffs then and there excepted.)

Copy of judgm't & execution of McNair vs. Moses Austin.

Copy of judgment and execution of McNair against Moses Austin, as follows:

And afterwards, to wit, on the day and year aforesaid, came the parties aforesaid, by their respective attorneys aforesaid, whereupon all and singular the premises being seen and heard, and by the court here fully 63 understood, and mature deliberation being thereupon had, for that it appears to the court that the said amended declaration and the matters therein contained, in manner and form as they are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his action aforesaid thereof against him, the said defendant, therefore it is considered that the said Alexander McNair take nothing by his said writ, and that the said Moses Austin go thereof without day; and it is further considered that the said Moses Austin recover against the said Alexander McNair his costs and charges by him about his defence in this behalf expended, and that he have thereof execution.

Execution.

TERRITORY OF MISSOURI,
Northern Circuits, ss:

The United States of America to the sheriff of the county of Washington, greeting:

Whereas Alexander McNair, at our superior court of our Territory of Missouri for the northern circuit, before our judges, hath recovered against Moses Austin the sum of four hundred and ninety-three dollars & ninety-four cents, which to the said Alexander McNair were adjudged for his damages, as well by reason of not performing certain promises and undertakings as for his costs in that suit expended, as appears to us of record:

These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Moses Austin, you cause to be 64 made the damages and costs aforesaid, and that you have the same before the judges of our said court on the third Monday in September next, to render to the said Alexander McNair the damages and costs aforesaid; and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you that you take the said Moses Austin, if he be found within your bailiwick, and him safely keep, so that you have his body before the same judges on the said third Monday in September, to satisfy the said Alexander McNair the damages & costs aforesaid; and that you certify to our said judges how you execute this writ, and have you then and there this writ.

Witness the honorable Silas Bent, esquire, presiding judge of our said court, at St. Louis, this fourth day of August, in the year of our Lord one thousand eight hundred and nineteen, and of our Independence the forty-fourth.

[SEAL.] J. V. GARNIER,
Cl'k S. C. N. C.

And the damages and costs endorsed on said execution is as follows, viz:

Damages, $456.75; clerk S. C., 9.00; attorney, 14.00; clerk C. C. St. Louis, 8.69; Sheriff Thompson, 4.50; tax on original writ, 1.00; do. on execution, 1.00.

And the returns of the sheriff endorsed on said execution are as follows:

Rec'd this writ September 7th, 1819.

D. DUNKLIN *Sh'ff.*

Served the within execution on Moses Austin. Tract of land adjoining Mine au Breton, and not time to sell the same.

A. MILLER, *Dp.*,
For D. DUNKLIN, *Sh'ff.*

65 And afterwards, on the fourteenth day of October, in the year eighteen hundred and nineteen, an alias execution was issued in said case, which is as follows, to wit:

TERRITORY OF MISSOURI,
Northern Circuit, ss:

The United States of America to the sheriff of the county of Washington, greeting:

Whereas Alexander McNair, at our superior court of our Territory of Missouri for the northern circuit, before our judges, hath recovered against Moses Austin the sum of four hundred and ninety-three dollars & ninety-four cents, which to the said Alexander McNair were adjudged for his damage which he sustained as well by reason of not performing certain promises and assumptions as for his costs in that suit expended, as appears to us of record. These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Moses Austin you cause to be made the damages and costs aforesaid, and that you have the same before the judges of our said court on the said fourth Monday in April next, to render the said Alexander McNair the damages aforesaid; and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you that you take the said Moses Austin, if he be found within your bailiwick, and him safely keep, that you have his body before the said judges on the said fourth Mon-
66 day in April next, to satisfy the said Alexander McNair the damages and costs aforesaid, and that you certify to our said judges how you execute this writ; and have you then and there this writ.

Witness the honorable Silas Bent, esquire, presiding judge of our said court, at St. Louis, this fourteenth day of October, A. D. 1819, and of our Independence the forty-fourth.

[SEAL.] J. V. GARNIER,
Cl'k S. C. N. C.

And the endorsement on said execution of the damages and costs is as follows, to wit:

Debt, 456.77; clerk S. C., 9.00; attorney, 14.00; Clerk Gamble, 8.69;

Sheriff Thompson, $4.50; taxes on writ & execution, 2.00; alias execution & tax, 2.00; interest from May 6th, 1819, 24.00.

And the endorsements of the sheriff made thereon is as follows:

Received this writ the 6th day Nov'r, 1819.

A. MILLER, *Dp.*,
For D. DUNKLIN, *Sh'ff.*

Satisfied.

A. MILLER, *D. Sheriff*,
For D. DUNKLIN, *Sh'ff.*

By sale of personal property, $230.67; by do. of real do, 310.75—$546.41.

(Copy of execution objected to by plaintiffs, because it contained neither testimonium nor seal of the court, but only a scrawl. Objection overruled; to which the plaintiffs then and there excepted.)

Deed of Moses Austin by the sheriff to Charles R. Ross, agent for B'k of St. Louis.

Certified copy of deed of Moses Austin by the sheriff to Charles R. Ross, agent for Bank of St. Louis, as follows:

To all to whom these presents shall come, greeting:

Andrew Miller for Daniel Dunklin, sheriff of the county of Washington, in the Territory of Missouri.

67 Whereas two writs of execution were on the fourteenth day of October, in the year of our Lord one thousand eight hundred and nineteen, issued from the clerk's office of the superior court of the Territory of Missouri against the goods and chattels, lands and tenements, of the said Moses Austin, directed to the sheriff of the county aforesaid, and to him, the said sheriff, delivered on the sixth day of November, in the year of our Lord one thousand eight hundred and nineteen, the copies of which said executions is herein recited, and is the words and figures following, to wit:

TERRITORY OF MISSOURI,
Northern Circuit:

The United States of America to the sheriff of the county of Washington, greeting:

Whereas the president, directors, and company of the Bank of St. Louis at our superior court of our Territory of Missouri, held in and for the northern circuit, before the judge of our said court at St. Louis, recovered against Moses Austin the sum of fourteen thousand twenty-six dollars seventy-two and three-fourth cents, which to them were adjudged for their damages which they obtained, as well by reason of not performing certain promises and assumptions as for their costs and charges by them about their suit expended, as appears to us of record: These are therefore to command you that of the goods and chattels, lands and tenements, of the

And the damages and costs endorsed on said execution is as follows, viz:

Damages, $456.75; clerk S. C., 9.00; attorney, 14.00; clerk C. C. St. Louis, 8.69; Sheriff Thompson, 4.50; tax on original writ, 1.00; do. on execution, 1.00.

And the returns of the sheriff endorsed on said execution are as follows:

Rec'd this writ September 7th, 1819.

D. DUNKLIN *Sh'ff.*

Served the within execution on Moses Austin. Tract of land adjoining Mine au Breton, and not time to sell the same.

A. MILLER, *Dp.,*
For D. DUNKLIN, *Sh'ff.*

65 And afterwards, on the fourteenth day of October, in the year eighteen hundred and nineteen, an alias execution was issued in said case, which is as follows, to wit:

TERRITORY OF MISSOURI,
Northern Circuit, ss:

The United States of America to the sheriff of the county of Washington, greeting:

Whereas Alexander McNair, at our superior court of our Territory of Missouri for the northern circuit, before our judges, hath recovered against Moses Austin the sum of four hundred and ninety-three dollars & ninety-four cents, which to the said Alexander McNair were adjudged for his damage which he sustained as well by reason of not performing certain promises and assumptions as for his costs in that suit expended, as appears to us of record. These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Moses Austin you cause to be made the damages and costs aforesaid, and that you have the same before the judges of our said court on the said fourth Monday in April next, to render the said Alexander McNair the damages aforesaid; and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you that you take the said Moses Austin, if he be found within your bailiwick, and him safely keep, that you have his body before the said judges on the said fourth Monday in April next, to satisfy the said Alexander McNair the damages and costs aforesaid, and that you certify to our said judges how you execute this writ; and have you then and there this writ. 66

Witness the honorable Silas Bent, esquire, presiding judge of our said court, at St. Louis, this fourteenth day of October, A. D. 1819, and of our Independence the forty-fourth.

[SEAL.] J. V. GARNIER,
Cl'k S. C. N. C.

And the endorsement on said execution of the damages and costs is as follows, to wit:

Debt, 456.77; clerk S. C., 9.00; attorney, 14.00; Clerk Gamble, 8.69;

Sheriff Thompson, $4.50; taxes on writ & execution, 2.00; alias execution & tax, 2.00; interest from May 6th, 1819, 24.00.

And the endorsements of the sheriff made thereon is as follows:

Received this writ the 6th day Nov'r, 1819.

A. MILLER, *Dp.*,
For D. DUNKLIN, *Sh'ff.*

Satisfied.

A. MILLER, *D. Sheriff*,
For D. DUNKLIN, *Sh'ff.*

By sale of personal property, $230.67; by do. of real do, 310.75—$546.41.

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To all to whom these presents shall come, greeting:

Andrew Miller for Daniel Dunklin, sheriff of the county of Washington, in the Territory of Missouri.

67 Whereas two writs of execution were on the fourteenth day of October, in the year of our Lord one thousand eight hundred and nineteen, issued from the clerk's office of the superior court of the Territory of Missouri against the goods and chattels, lands and tenements, of the said Moses Austin, directed to the sheriff of the county aforesaid, and to him, the said sheriff, delivered on the sixth day of November, in the year of our Lord one thousand eight hundred and nineteen, the copies of which said executions is herein recited, and is the words and figures following, to wit:

TERRITORY OF MISSOURI,
Northern Circuit:

The United States of America to the sheriff of the county of Washington, greeting:

Whereas the president, directors, and company of the Bank of St. Louis at our superior court of our Territory of Missouri, held in and for the northern circuit, before the judge of our said court at St. Louis, recovered against Moses Austin the sum of fourteen thousand twenty-six dollars seventy-two and three-fourth cents, which to them were adjudged for their damages which they obtained, as well by reason of not performing certain promises and assumptions as for their costs and charges by them about their suit expended, as appears to us of record: These are therefore to command you that of the goods and chattels, lands and tenements, of the said Moses Austin in your bailiwick you cause to be made the damages and costs aforesaid, and that you have the same before our 68 judge aforesaid, at the town of St. Louis, on the fourth Monday in April next, to render the said president, directors, and company the damages aforesaid, and for want of sufficient goods and chattels, lands and tenements, of the said Moses Austin in your bailiwick whereon to levy and make the same, we command you that you take the said Moses Austin, if he be found within your baliwick, and him safely keep, so that you have his body before the same judge on the said fourth Monday in April next, to satisfy the said plantiffs the damages and costs aforesaid, and that you certify to our said judge how you execute this writ; and have you then and there this writ.

Witness the honorable Silas Bent, esquire, presiding judge of our said court at St. Louis, this fourteenth day of October, in the year one thousand eight hundred and nineteen, and of our Independence the forty-fourth.

J. V. GARNIER,
Clerk S. C. N. C.

TERRITORY OF MISSOURI,
Northern Circuit, ss:

The United States of America to the sheriff of the county of Washington, greeting:

Whereas Alexander McNair, at our supreme court of our Territory of Missouri for the northern circuit, before our judge, hath recovered against Moses Austin the sum of four hundred and ninety-three dollars and ninety-four cents, which to the said Alexander McNair were ad- 69 judged for his damages which he sustained as well by reason of not performing certain promises and assumptions as for his costs in that suit expended, as appears to us of record:

These are therefore to command you that if the goods and chattels, lands and tenements, of the said Moses Austin, you cause to be made the damages and costs aforesaid, and that you have the same before the judge of our said court, on the said fourth Monday in April next, to render to the said Alexander McNair the damages and costs aforesaid, and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you that you take the said Moses Austin, if he be found within your bailiwick, and him safely keep, so that you have his body before the same judge on the said fourth Monday in April next, to satisfy the said Alexander McNair the damages and costs aforesaid, and that you certify to our said judge how you execute this writ; and have you then and there this writ.

Witness the honorable Silas Bent, esquire, presiding judge of our said court, at St. Louis, the fourteenth day of October, A. D. 1819, and of our Independence the forty-fourth.

J. V. GARNIER,
Clerk S. C. N. C.

By virtue of which said writs of executions the said sheriff, on the twenty-first day of March, one thousand eight hundred and twenty, 70 did levy and seize upon all the right, title, claim, interest, and prop-

erty of said Moses Austin of, in, and to the tract of land lying and being in the county of Washington, on Mine Creek, adjoining the village of Mine à Burton, being one league square, except three several lots, to wit, one lot to Israel McGready, containing two acres and thirteen poles, beginning at the Northwest corner of John S. Brickey's lot, on Burton street, in the town of Potosi, running with said street No. 58 W. nine poles to a stake; thence South seventy-three and one-half W. sixteen poles to a thorn bush; thence S. 47 West eleven poles and fifteen links, to Mine Creek; thence up said creek South thirty E. eleven poles to a stake corner, to Israel McGready; thence with his line No. 32 E. twenty-four poles to a stake; thence S. 32 E. six poles and three links to the Southwest corner of John S. Brickey's lot; thence with said lot No. 58 E. thirteen poles and five links to the beginning; one lot of twelve acres to John Brickey, to be laid off according to the following boundaries, to wit: Bounded East by Potosi & Enoch Windes' lot; W. by Jerard Brickey's lot and hollow below said Jerard Breckey, to run to the head thereof; thence to the lots laid off by said Moses Austin, adjoining the town of Potosi; thence with said lots as to include twelve acres; one lot of one acre to Jerard Brickey, adjoining the said Jerard's former purchase of Moses
Austin, at the lower end of his lot, the whole width thereof,
71 with all and singular the buildings and improvements thereon
having been by him, the said deputy sheriff, advertised agreeable to law, twenty days before the day of sale, by hand-bills, six of which were affixed and set up in six of the most public places in the county, a copy of which is in the words and figures following, to wit:

ALEXANDER MCNAIR
vs.
MOSES AUSTIN.

THE PRESIDENT, DIRECTORS, &C., OF THE
bank of St. Louis
vs.
MOSES AUSTIN.

Sheriff's sale.

Will be offered for sale on the second day of the next March term of the circuit court, and when the honorable court are sitting for the county of Washington, all the right, title, and interest of Moses Austin to his Mine au Breton tract of land in lots or the whole, as it may be offered on the day of sale. The said land is confirmed on the of the Mineral Fork, adjoining Mine au Breton, in Breton Township, levied on as the property of said Austin to satisfy the said executions and costs; made returnable to the superior court of St. Louis, April term, 1820.

Feb'y 28th, 1820.

A. MILLER, *D. Sheriff,*
For D. DUNKLIN, *Sheriff.*

A copy of which said advertisement has been by me returned to and filed in the office of the clerk circuit court, according to law.

In pursuance to which said executions and advertisements the said deputy sheriff did on the twenty-first day of March, one thousand eight
72 hundred and twenty, being Tuesday, the second day of the term of the circuit court for the county of Washington, and while said court was in session at the court-ho'se door, expose to public sale to satisfy the said writs of executions aforesaid the aforesaid tract of land, with all and singular the buildings and improvements thereon of whatsoever nature and kind. And Charles R. Ross, agent for the president, directors, & co. of the Bank of St. Louis, was the highest and last bidder for the sum of seven thousand one hundred dollars, when the same was by the said deputy sheriff struck off to him, the said Charles R. Ross.

Now know ye that Andrew Miller, for Daniel Dunklin, sheriff of the county of Washington, for and in consideration of the said sum of seven thousand one hundred dollars, lawful money, to me in hand paid by the said Charles R. Ross, agent for the president, directors, and company of the Bank of St. Louis, and by virtue and in pursuance of the authority in me vested as d. sheriff by law, doth give, grant, bargain, sell, transfer, assign, and set over, and by these presents doth give, grant, bargain, sell, transfer, assign, and set over unto him, the said Charles R. Ross, his heirs and assigns, all the right, title, claim, interest, and property of him, the said Moses Austin, of, in, and to the aforesaid tract or piece of land, with all and singular the buildings and appurtenances belonging or
73 affixed to the same: To have and to hold the said tract of land aforesaid, with the appurtenances, to the said Charles R. Ross, his heirs and assigns, forever.

In the testimony whereof I have hereunto set my hand and seal, at the town of Potosi, this twenty-first day of March, in the year one thousand eight hundred and twenty.

A. MILLER,
Deputy Sheriff,
For D. DUNKLIN, *Sheriff*.

TERRITORY OF MISSOURI,
Washington County, ss:

I, John Brickey, clerk of the county court in and for the county aforesaid, do hereby certify that *that* Andrew Miller, deputy sheriff for Daniel Dunklin, sheriff of the county aforesaid, appeared in open court on the twenty-second day of March, in the year one thousand eight hundred and twenty, and acknowledged the within instrument of writing to be his voluntary act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of office, at office, this twenty-second day of March, A. D. 1820, and of the Independence of the United States the forty-fourth.

~~[SEAL.]~~ JOHN BRICKEY, *Cl'k.*

Recorded, bearing date May 29th, 1820.

JOHN BRICKEY,
Recorder.

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, recorder in and for said county, do hereby
74 certify that the foregoing is a true copy of the deed from A. Mil-

ler, d. sheriff, to Charles R. Ross, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Potosi, this 7th day of June, 1836.

[SEAL.] ISRAEL McGREADY,
Recorder.

(Objected to by plaintiffs because it contained no seal by the sheriff, nor any seal of the court to the certificate of the clerk taking the acknowledgement. Also the sale by the sheriff objected to because it appeared from the judgment and the mortgage that it was the sale of the same land on which the bank had the mortgage. These objections were overruled; to which the plaintiffs then and there excepted.)

Deed of Bank of St. Louis to Charles R. Ross.

Certified copy of deed of Bank of St. Louis to Charles R. Ross, as follows:

Know all men by these presents that whereas Charles R. Ross, as agent for the president, directors, and company of the Bank of St. Louis, in conformity to a resolution of the board of directors of the said bank passed on the day of March last, purchased at sheriff's sale, at Potosi, in the county of Washington, all the right, title, claim, and interest of Moses Austin to certain property described as follows: A tract of land lying and being in the county of Washington, on Mine Creek, adjoining the village of Mine à Breton, being one league square, except three several lots to wit: one lot to Israel McGready, containing two acres
75 and thirteen poles, beginning at the Northwest corner of John S.
Brickey's lot on Burton street, in the town of Potosi, running with said street N. 58 W. nine poles to a stake; thence south seventy-three and a half W. sixteen poles to a thorn-bush; thence S. 47 west seven poles and fifteen to Mine Creek; thence up said creek south thirty E. eleven poles to a stake corner to Israel McGready's; thence with his line N. 32 E. twenty-four poles to a stake; thence S. 32 E. six poles and three links to the southwest corner of John S. Brickey's lot; thence with said lot N. 58 E. thirteen poles and five links to the beginning. One lot of twelve acres to John Brickey, to be laid off according to the following boundaries, to wit: bounded E. by Potosi and Enoch Wind's lot, W. by Jerard Brickey's lot and hollow below said Jerard Brickey, to run to the head thereof; thence to the lots laid of' by Moses Austin adjoining the town of Potosi; thence with said lots so as to include the said twelve acres. One lot of one acre to Jerard Brickey, adjoining the said Jerard's former purchase of Moses Austin, at the lower end of his lot, the whole width thereof, with all and singular the buildings & improvements thereon.

And whereas the said Charles R. Ross, in his capacity of agent as aforesaid, did, on the twenty-first day of March, eighteen hundred and
76 twenty, receive a deed from the sheriff of the county of Washing-
ton for the property aforesaid; and whereas the board of directors of the said bank had previously assigned the claims which were appropriated to the payment of the purchase-money for the above-mentioned property to Risdon H. Price, Samuel Hammond, Rufus Easton, and Rob-

ert Simpson to indemnify them for the payment of ten thousand dollars assumed by them to be paid to the Bank of Edwardsville for the Bank of St. Louis, and for other purposes. Now therefore, the president, directors, & company of the Bank of St. Louis, in consideration of the premises, do hereby release, abandon, and transfer unto the said Charles R. Ross, and to his heirs and assigns forever, all the right, title, interest, and claim, as well in equity as at law, which they have in, to, and upon the property and tract of land above mentioned and described, together with all the privileges & appurtenances to the same in any wise belonging.

Nevertheless, in trust for the purposes following, and upon the express condition that the said Charles R. Ross, his heirs or assigns, shall dispose of and apply the same in the manner hereinafter set forth; that is to say, the said Charles R. Ross, his heirs or assigns, shall sell and dispose of the said property under the directions and by the advise and consent of the said Price, Hammond, Easton, & Simpson, or any two of them,
77 and shall deliver and pay over to the said Price, Hammond, Easton, & Simpson, or their representatives, jointly, all the proceeds of the sale of the said property or any part thereof.

In testimony whereof the president of the said Bank of St. Louis, by authority of the board of directors thereof, has herewith set his hand and affixed the seal of the said Bank of St. Louis, this day of April, in the year of our Lord one thousand eight hundred and twenty.

The word' "in equal partners" were erased, and the word "jointly" placed instead thereof before signing.

RISDON H. PRICE, *Pres't.*

Signed, sealed, and delivered in presence of—
W. Hughes.

The undersigned, directors of the Bank of St. Louis, hereby ratify and confirm the execution of the foregoing instrument of writing.

St. Louis, April 17th, 1820.

WM. M. O'HARA,
ABIJAH HULL,
ROBERT SIMPSON,
S. R. OBER,
E. B. CLEMSON,
G. HAMMOND,
CLEMENT MARCH,
Directors of the Bank of St. Louis.

Territory of Missouri,
County of St. Louis, ss:

This day personally appeared before me, the deputy clerk of the circuit court within and for the county of St. Louis, William Hughes, the subscribing witness to the within deed, and made oath he saw the within-named Risdon H. Price sign, seal, and acknowledge the same in his presence to be his act and deed for the purposes therein men-
78 tioned, and that he saw the said E. B. Clemson, Wm. M. O'Hara, Robert Simpson, S. Hammond, Abijah Hull, S. R. Ober, and Clement March sign their names as directors of the Bank of St. Louis, ratifying the execution of the within instrument of writing.

Given under my hand and seal of office, this nineteenth day of *of* April, eighteen hundred and twenty, and of the American Independence the forty-fourth.

JOHN O. YOUNG, *D. Clerk*,
For ARCHIBALD GAMBLE, *Clerk*.

Recorded, bearing date June 15th, 1820.
JOHN BRICKEY, *Recorder*.

State of Missouri,
Washington County, ss:

I, Israel McGready, clerk of the circuit court and recorder in and for said county, do hereby certify that the foregoing is a true copy of the deed from the president, directors, & co. of the Bank of St. Louis to Charles R. Ross as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Potosi, this 20th day of June, 1836.

[SEAL.] ISRAEL McGREADY,
Recorder.

(Objected to by plaintiffs, because it did not purport to be under the official seal of the bank as a corporation. Objection overruled; to which plaintiffs then and there excepted.).

79 *Certified copy of deed of Simpson & al. to C. R. Ross.*

Certified copy of deed of Simpson et al., directors of Bank of St. Louis, to Charles R. Ross, as follows:

Whereas the president, directors, and company of the Bank of St. Louis did, on the day of April, in the year of our Lord one thousand eight hundred and twenty, release, abandon, and transfer unto Charles R. Ross and to his heirs and assigns, forever, all the right, title, interest, and claim, as well in equity as at law, which they had in, to, and upon a tract of land lying and being in the county of Washington, on Mine Creek, adjoining the village of Mine à Breton, being one league square, except three several lots, to wit: one lot to Israel McGready, containing two acres and thirteen poles, beginning at the northwest corner of John S. Brickey's lot, on Burton street, in the town of Potosi, running with said street No. 58′ W. nine poles to a stake; thence south seventy-three and a half W. sixteen poles to a thorn-bush; thence S. 47 W. seven poles and fifteen to Mine Creek; thence up said creek south thirty E. eleven poles to a stake corner to Israel McGready's; thence with his lines N. 32 E. twenty-four poles to a stake; thence S. 32 E. six poles and three links to the southwest corner of John S. Brickey's lot; thence with said lot N. 58 E. thirteen poles & five links to the beginning. One lot of twelve acres to John Brickey, to be laid off according to the following boundaries,
80 to wit:

Bounded E. by Potosi & Enoch Wind's lot W. by Jerard Brickey's lot and hollow, said Jerard Brickey's, to run to the head thereof; thence to the lots laid off by Moses Austin, adjoining the town of Potosi; thence with the said lots so as to include the said twelve acres. One lot of one acre to Jerard Brickey, adjoining the said Jerard's former purchase of Moses Austin, at the lower end of his lot, the whole width thereof, with all and singular the buildings and improvements thereon, together with all the privileges and appurtenances to the same in any wise belonging. Nevertheless in trust for the purposes following, and upon the express condition that the said Charles R. Ross, his heirs, and assigns should dispose of and apply the same in the manner thereinafter set forth; that is to say:

The said Charles R. Ross, his heirs, and assigns should sell and dispose of the said property under the direction and by the advice and consent of the said Price, Hammond, Easton, and Simpson, or any two of them, and should deliver and pay over to the said Price, Hammond, Easton, and Simpson, or their representatives, jointly, all the proceeds of the sale of the said property or any part thereof. Therefore be it known that for and in consideration of the sum of ten thousand dollars, with interest thereon from and after the
day of , A. D. eighteen hundred and nineteen, paid or secured
to be paid by Risdon A. Price, esq., of St. Louis, at and before the
81 time of sealing and delivering these presents, which sum of ten thou-
sand dollars, with interest as aforesaid, is paid or secured as aforesaid, in liquidation of two certain promissory notes of five thousand dollars each, dated on the said day of , 1819, signed by the said Price, Hammond, Easton, and Simpson, to the president, directors, and company of the Bank of Edwardsville, and also for divers other good causes and considerations us hereunto moving, and also in pursuance of the powers and privileges granted to and vested in us in and by the deed of trust aforesaid to the said Charles R. Ross, we, the undersigned, do hereby authorize, order, and require the said Charles R. Ross, or his legal representatives, to sell, assign, transfer, convey, and deliver to the said Risdon H. Price, and to his heirs, and assigns forever, all and singular the said tract of land hereinbefore described, containing one league square (commonly known by the name of the Mine à Breton tract, formerly the property of Moses Austin), and also in the capacity of trustee, as aforesaid, to make and execute good and sufficient covenants of warranty to the said Risdon H. Price, his heirs and assigns forever, for all the right, title, interest, property, and claim which was of Moses Austin in and to the said tract of land, and was subsequently invested in the said Charles R. Ross as agent and trustee aforesaid.

82 In witness whereof we have hereunto set our hands and affixed
our seals, at St. Louis aforesaid, this twenty-first day of December, in the year of our Lord one thousand eight hundred & twenty.

ROBERT SIMPSON. [SEAL.]
RUFUS EASTON. [SEAL.]
S. HAMMOND. [SEAL.]

Signed, sealed, & delivered in the presence of—
J. V. GARNIER.

STATE OF MISSOURI,
County of St. Louis:

This day personally appeared before me, the deputy clerk within and for the county of St. Louis, the within-named Robert Simpson, Rufus Easton, & Samuel Hammond, who acknowledged the within instrument of writing to be their act and deed, hand and seal for the purposes therein expressed.

Given under my hand and seal of office, at St. Louis, this second day of April, eighteen hundred and twenty.

E'W'D BAKER, *D. Cl'k.*

Recorded bearing date June 2nd, 1821.

JOHN JONES, *C. C. C. W. C.*

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, clerk of the circuit court and recorder in and for said county, do hereby certify that the foregoing is a true copy of the deed from Simpson, Easton, and Hammond to Charles R. Ross, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at office in the town of Potosi, this 20th day of June, 1836.

[SEAL.] ISRAEL McGREADY, *Rec'rd'.*

83 *Certified copy of deed of Chas. R. Ross to Risdon H. Price.*

Certified copy of deed of Charles R. Ross to Risdon H. Price, as follows:

Know all men by these presents that whereas Charles R. Ross, as agent for the president, directors, and company of the Bank of St. Louis, in conformity to a resolution of the board of directors of the said bank passed on the seventeenth day of March, eighteen hundred and twenty, purchased at sheriff's sale at Potosi, in the county of Washington, all the right, title, claim, and interest of Moses Austin to certain property described as follows:

A tract of land lying and being in the county of Washington, on Mine Creek, adjoining the village of Mine à Burton, being one league square, except three several lots, to wit: one lot to Israel McGready, containing two acres and thirteen poles, beginning at the northwest corner of John S. Brickey's lot on Burton street in the town of Potosi, running with said street N. 58° W. nine poles to a stake, thence south seventy-three and a half W. sixteen poles to a thorn-bush, thence S. 47 W. seven poles and fifteen link' to Mine Creek, thence up said creek south thirty east eleven poles to a stake, corner to Israel McGready, thence with his line N. 32 E. twenty-four poles to a stake, thence S. 32 E. six poles and three links to the southwest corner of John S. Brickey's lot, thence with said lot N. 58 E. thirteen poles and five links, to the beginning. One lot of twelve acres to John Brickey, to be laid off according to the following
84 boundaries, to wit: bounded E. by Potosi and Enoch Wind's lot, W. by Israel Brickey's lot and hollow below said Israel Brickey, to run to the head thereof, thence to the lots laid off by Moses Austin adjoining the town of Potosi, thence with said lots so as to include the said twelve acres. One lot of one acre to Israel Brickey, adjoining the said Jerard, former purchase of Moses Austin, at the lower end of his lot, the whole width thereof, with all and singular the buildings and improvements thereon;

And whereas the said Charles R. Ross, in his capacity of agent as aforesaid, did, on the twenty-first day of March, eighteen hundred and twenty, receive a deed from the sheriff of the county of Washington for the property aforesaid;

And whereas the board of directors of the Bank of St. Louis had previously assigned the claims which was appropriated to the payment of the purchase-money for the above-mentioned property to Risdon H. Price, Samuel Hammond, Rufus Easton, and Robert Simpson to indemnify them for the payment of ten thousand dollars assumed by them to be paid to the Bank of Edwardsville for the Bank of St. Louis, and for other purposes;

And whereas the said president, directors, and company of the Bank of St. Louis did, on the twentieth day of April, in the year of our Lord one thousand eight hundred and twenty, release, abandon, and transfer unto
the said Charles R. Ross, and to his heirs and assigns forever, all
85 the right, title, interest, and claim, as well in equity as in law, which
they had in and to and upon the property and tract of land above-mentioned and described, together with all the privileges and appurtenances to the same in anywise belonging;

Nevertheless in trust for the purpose following, and upon the express condition that the said Charles R. Ross, his heirs or assigns, would dispose of and apply the same in the manner hereinafter set forth; that is to say, the said Charles R. Ross, his heirs or assigns, should sell and dispose of the same property under the direction and by the advice and consent of the said Price, Hammond, Easton, and Simpson, or any two of them, and should deliver and pay over to the said Price, Hammond, Easton, and Simpson, or their representatives, jointly, all the proceeds of the sale of the said property or any part thereof;

And whereas Samuel Hammond, Rufus Easton, and Robert Simpson, for whose benefit and under whose control the said tract of land above described was conveyed and is held, did, on the day of the date of these presents, in and by a certain instrument of writing under their hands and seals, authorize, order, and require the said Charles R. Ross or his legal representatives to sell, assign, transfer, convey, and deliver to the said
Risdon H. Price and to his heirs and assigns forever all and sin-
86 gular the said tract of land herein and thereinbefore described, con-
taining one league square, and also in his capacity of trustee, as aforesaid, to make and execute good and sufficient covenants of warranty to the said Risdon H. Price, his heirs and assigns forever, for all the right, title, interest, property, and claim, which was of Moses Austin in and to the said tract of land, and was subsequently vested in the said Charles R. Ross as agent, trustee aforesaid:

Wherefore be it known that the said Charles R. Ross, agent and trustee as aforesaid, for and in consideration of the authority and order signed by the said Hammond, Easton, and Simpson as aforesaid, and in further consideration of the sum of one dollar to me in hand paid by the said Risdon H. Price, the receipt whereof I do hereby acknowledge, and also in execution of the power and trust in me reposed, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Risdon H. Price, and to his heirs and assigns forever, all and singular the above-described tract of land, containing one league square, or so much thereof as has been and now is vested in my name as trustee for the said

Risdon H. Price, Samuel Hammond, Rufus Easton, and Robert Simpson: To have and to hold the said tract of land unto the said Risdon H. Price, his heirs and assigns forever, to his and their only proper use, benefit, and behoof.

87 And I, the said Charles R. Ross, in pursuance of the authority, and in execution of trust reposed in me as aforesaid, and in my capacity of agent or trustee, do hereby warrant, secure, and forever defend the title to the said tract of land hereby conveyed to him, the said Risdon H. Price, his heirs and assigns forever, against the lawful claim or claims of all and every person or persons whatever.

In witness whereof I, the said Charles R. Ross, agent or trustee as aforesaid, have hereunto set my hand and seal this twenty-first day of December, in the year of our Lord one thousand eight hundred and twenty.

CHARLES R. ROSS, [SEAL.]
As Agent of the Bank of St. Louis.

(An erasure, 1st page, 4th line, before the words "of directors," done before the signing and delivery of these presents; also "W" inserted over the word "nine," first page, thirteenth line; also the words "eighteen hundred and *ad* twenty" interlined on the first page.)

ROBERT RANKEN.

STATE OF MISSOURI,
County of St. Louis, ss:

Before me, Th. Douglas, a justice of the peace within and for the county aforesaid, personally came and appeared Charles R. Ross, whose name is subscribed to the above instrument of writing, and acknowledged the same to be his act and deed, hand and seal, for the purposes therein mentioned.

Given under my hand this 3rd day of April, 1821.

TH. DOUGLAS, *J. P.*

88 Recorded, bearing date June 1st, 1821.

JOHN JONES,
Clerk C. C. W. C.

STATE OF MISSOURI,
Washington County ss:

I, Israel McGready, clerk of the circuit court and recorder in and for said county, do hereby certify that the foregoing is a full, true, and perfect copy of the deed from Charles R. Ross to Risdon H. Price, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at office, in the town of Potosi, this 20th day of June, 1836.

[SEAL.] ISRAEL McGREADY, *Recorder.*

Certified copy of deed of trust by R. H. Price to Bank of Edwardsville.

Certified copy of deed of trust by Risdon H. Price and wife to Bank of Edwardsville, as follows:

Know all men by these presents that whereas Risdon H. Price, Robert Simpson, Samuel Hammond, and Rufus Easton did, on the twenty-second day of February, eighteen hundred and nineteen, execute to the president, directors, and company of the Bank of Edwardsville two promissory notes for the sum of five thousand dollars each, upon which suits have been instituted by the bank (and are now pending) against them ;

And whereas Risdon H. Price has assumed upon himself individually the payment of the debt aforesaid, together with the interest thereon and all the costs that have accrued or that may accrue in the prosecution
89 of the said suits :

Now, therefore, in consideration of the premises and of the stipulations hereinafter contained, and for the purpose of securing to the said Bank of Edwardsville the ultimate payment of the said debt at the times and in the manner hereinafter to be mentioned, the said Risdon H. Price and Mary G. Price, his wife, have this day granted, bargained, and sold, in trust, and do by these presents grant, bargain, and sell, in trust, to Benjamin Stephenson, Richard T. McKinney, and Theopilus W. Smith, their heirs and assigns, for the use of the Bank of Edwardsville, in the manner hereinafter appointed, the following tracts or parcels of land, viz : One tract of land lying and being in the county of Washington, on Mine Creek, adjoining the village of Mine à Burton, being one league square, except three several lots, to wit :

One lot to Israel McGready, containing two acres and thirteen poles, beginning at the northwest corner of John S. Brickey's lot on Burton street in the town of Potosi, running with said street N. 58 W. nine poles to a stake; thence south seventy-three and a half west sixteen poles to a thorn-bush ; thence S. 47 west seven poles and fifteen links to Mine Creek ; thence up said creek south 30 E. eleven poles to a stake, corner to Israel McGready's ; thence with his line north 32 E. twenty-four poles to stake ; thence S. 32 E. six poles and three links to the southwest corner of John S. Brickey's lot ; thence
90 with said lot N. 58 E. thirteen poles and five links to the beginning. One lot of twelve acres to John Brickey, to be laid off according to the following boundaries, to wit : bounded E. by Potosi and Enoch Wind's lot, W. by Jerard Brickey's lot and hollow below said Jerard Brickey, to run to the head thereof; thence to the lots laid off by Moses Austin adjoining the town of Potosi; thence with said lots so as to include the said twelve acres. One lot of one acre to Jerard Brickey, adjoining the said Jerard's former purchase of Moses Austin, at the lower end of his lot, the whole width thereof, it being the same tract or parcel of purchased by Charles R. Ross, as the agent of the Bank of St. Louis, at sheriff's sale, on the twenty-first day of March, eighteen hundred and twenty, and conveyed by said Ross to the said Risdon H. Price by deed of this date, under and by virtue of a deed of release executed to him by the president, directors, and company of the Bank of St. Louis, in trust, for the said Risdon H. Price, Robert Simpson, Samuel Hammond, and Rufus Easton, and according to their appointment, as per reference to the deeds and authority aforesaid, of record in the county of Washington, will more fully at large appear. One other tract or parcel of land situate, lying, and being in the county of St. Louis, containing two hundred acres, it being the same tract purchased by William M. O'Hara of John
91 Brown and Alice, his wife, on the twenty-eighth day of April, eighteen hundred and twenty, as per reference to the deed, of record

in the county of St. Louis, will more fully appear, and which was sold
and conveyed by the said William M. O'Hara and Susan, his wife, to the
said Risdon H. Price, by deed bearing date the first day of September,
eighteen hundred and twenty. One other tract or parcel of land, contain-
ing six hundred and forty acres, lying and being situate and adjoining to
the tract last-above described, which was located by virtue of a New Mad-
rid certificate (commonly so called) issued by Frederick Bates, esquire, re-
corder of land titles for the Territory of Missouri, pursuant to an act of
Congress passed on the seventeenth day of February, eighteen hundred
and fifteen, for the relief of the inhabitants of the late county of New
Madrid who suffered by earthquakes on the twelfth day of November,
eighteen hundred and *fif*teen, (No. 13) number thirteen, in favor of An-
tonie Gamlin, or his legal representatives, and sold and conveyed by the
said William M. O'Hara and Susan, his wife, to the said Risdon H. Price,
by deed bearing date the first day of September, eighteen hundred and
twenty, aforesaid; together with one certain other tract or parcel of land,
containing seven hundred and forty acres, situate, lying, and being in the
county of St. Louis aforesaid, about seven or eight miles from the
92 town of St. Louis, on the Rivirre de Peres, whereon the said Ris-
don H. Price now has a farm and improvements a little to the left
of the main road leading from St. Louis to St. Charles; also on' lot and
two frame houses thereon situate in town of St. Louis, west of General
William Rector's large back-building, occupied by William Bennett as a
tavern, bounded north by the road leading to St. Charles, south by Papish
Papin, and west by a lot of John B. C. Lucas, containing sixty-five feet
front by one hundred feet deep, French measure, more or less.

To have and to hold the premises above described and sold unto them, the said Benjamin Stephenson, Richard T. McKinney, and Theophilus W. Smith, their heirs and assigns forever.

In trust to sell and dispose of the same or such portion or portions thereof as may be sufficient to raise from to time the several sums of money hereinafter mentioned as the same become due and payable.

Provided the said Risdon H. Price shall fail, neglect, or refuse to pay
the same, that is to say the sum of eighteen hundred and sixty-six dollars,
sixty-six and two-thirds cents, on the first day of April, eighteen hundred
and twenty-two, which will be the amount of interest that will then be
due upon the said sum of ten thousand dollars; and the principal sum
with interest thereon in three equal annual installments from the said first
day of April, for which several sums the said Price hath this day
93 executed his four several promissory notes; and provided also that
if it becomes necessary to sell and dispose of any portion of the
property above described for the purposes aforesaid it shall be the duty of
the said trustees to sell all the other land before the Mine à Breton tract,
and in every instance of a sale to give at least thirty days' notice in some
newspaper printed in the town of St. Louis.

And provided moreover that it shall be the duty of the said trustees, their heirs or assigns, so soon as the objects of their trust shall be fulfilled and accomplished, to execute *to execute* to the said Risdon H. Price, his heirs and assigns, or to whomsoever he shall appoint, a deed of release for the premises above described, or for such portion or portions as shall remain vested in them and undisposed of for the purposes of this deed of

trust, and to pay over to the said Risdon H. Price, his heirs and assigns, all moneys arising from such sale or sales that may remain in their hands after accomplishing the objects of this trust and defraying all necessary expenses attending such sale or sales; and provided moreover that it is the express understanding and agreement of the parties hereto that *that* any or two of the trustees herein named shall have full power and authority to act in the premises in the event of the death, sickness, inability or absence of the other or others in as full and ample a manner to all intents
94 and purposes as the three could do were they all present and concurring therein.

In testimony whereof the said Risdon H. Price and Mary, his wife, have hereunto set their hands and seals this seventh day of April, eighteen hundred and twenty-one.

RISDON H. PRICE. [SEAL.]
MARY G. PRICE. [SEAL.]

Signed, sealed and delivered in presence of (the word "eighteen" interlined before signing—)

THOMAS MCGUIRE, *J. P.* [SEAL.]
R. WASH.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the seventh day of April, in the year of our Lord eighteen hundred and *and* twenty-one, before me, a justice of the peace within and for the county aforesaid, personally came Risdon H. Price and Mary, his wife, and severally acknowledged the foregoing indenture as their act and deed, and the land and premises therein mentioned, and bargained and sold, to be the right estate of R. H. Price and Mary, his wife, therein mentioned, their heirs and assigns forever, she the said Mary G. Price being by me first made acquainted with the contents thereof, and by me privately examined apart from her said husband, when she executed the same voluntarily and without compulsion or undue influence of her said husband, acknowledged and declared that she executed the same voluntarily and without compulsion or undue influence of her said
95 husband. Taken and testified the *the* day and year aforesaid.

THOMAS MCGUIRE, *J. P.* [SEAL.]

STATE OF MISSOURI,
County of St. Louis, sct:.

I do hereby certify the foregoing instrument of writing to be truly recorded in my office, book B, pages 139 and following, this 28th day of April, 1821.

ARCHIBALD GAMBLE, *Clerk.*

Recorded, bearing date June 2nd, 1821.

JOHN JONES, *Cl'k C. C. W. C.*

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, clerk of the circuit court and recorder in and for said county, do hereby certify the foregoing to be a true copy of the deed from R. H. Price & wife to Stephenson & others, as the same remains of record in my office.

Witness my hand & seal of office the 21st day of June, 1836.

[SEAL.] ISRAEL McGREADY,
Recorder.

Certified copy of deed of Smith, Stephenson & McKinney to Louis Devotion.

Certified copy of deed by trustee, on sale of interest of Risdon H. Price to Louis Devotion as follows:

This deed, made and executed this 29th day of June, eighteen hundred and twenty-two, by and between Benjamin Stephenson, Richard T. McKenney and Theophilus W. Smith as trustee for the Bank of Edwardsville, of the first part, and Louis Devotion of the second part, witnesseth:

96 That in pursuance of the public advertisement, published in the Edwardsville Spectator and St. Louis Enquirer, in the words and figures following, to wit:

By virtue and in pursuance of the powers contained in a deed of trust made and executed by Risdon H. Price and Mary, his wife, bearing date the 7th day of April, 1821, the undersigned will expose to public sale, at the house of William H. Hopkins, in the town of Edwardsville, on the 7th day of June next, at the hour of 12 o'clock, noon, of the same, the whole or as much of the following-described land as will be sufficient to raise the sum of eighteen hundred and sixty-six dollars and 66⅔ cents, (being the first instalment named in the said deed and which the said Price has neglected to pay) agreeably to the conditions in the said deed specified, to wit:

A certain tract of land in the county of St. Louis containing two hundred acres, it being the same tract purchased by Wm. M. O'Hara of John Brown and Alice, his wife, on the 28th day of April, 1820, as by reference to the deed of record in the county of St. Louis will more fully appear, which was conveyed by the said Wm. M. O'Hara and Susan, his wife, to the said Risdon H. Price, by deed bearing date the 1st day of September, 1820.

Also one other tract of land, containing six hundred and forty acres, being adjoining to the tract last above-described, which was located by virtue of a New Madrid certificate issued by Frederick Bates, esq., recorder of land titles for the Territory of Missouri, and numbered 97 thirteen, in favor of Antoine Gourlin, or his legal representatives, and sold and conveyed by thesaid Wm. M. O'Hara and Susan, his wife, on the 1st day of September, 1820, aforesaid.

Also one other tract of land, containing six hundred and forty acres, situated in the county of St. Louis aforesaid, about seven or eight miles from the town of St. Louis, on the river Des Peres, whereon the said Price has a farm and improvements a little to the left of the main road leading from St. Louis to St. Charles.

Also one lot and two frame houses thereon situate in the town of St. Louis, west of Wm. Rector's brick building, lately occupied by Wm. Bennett as a tavern, bounded northerly by the road leading to St. Charles; southerly by Papist Papin; and westwardly by a lot owned by J. B. C. Lucas, containing sixty-five front by one hundred feet deep, French measure, more or less.

And in case the aforesaid land and premises, at such time and place, shall not sell for a sum sufficient to pay and discharge the said sum of eighteen hundred and sixty-six dollars and sixty-six and two-thirds cents, that then and in such case the undersigned will also proceed to sell all the right, title, interest, and estate of the said Risdon H. Price and Mary G. Price, his wife, of, in, and to the following tract of land situate in the county of Washington, in the State of Missouri, Mine Creek, adjoining the village of Mine au Breton, being one league square, excepting
98 three several lots, one lot owned by Israel McGready, containing
two acres and thirteen poles, beginning at the NW. corner of John S. Brickey's lot on Burton street, in the town of Potosi, running with said street N. 58° W. 9 poles to a stake; thence S. 73½° W. 16 poles to a thorn bush; thence S. 47° W. 7 poles and 15 links to Mine Creek; thence up said creek S. 30° E. 11 poles to a stake corner of Israel McGready's; thence with his line N. 32° E. 24 poles to a stake; thence S. 32° E. 6 poles and 3 links to the SW. corner of John S. Brickey's lot; thence with the said lot N. 58° 13 poles and 5 links to the beginning.

One lot of twelve acres to John Brickey, to be laid off according to the following boundaries, to wit: Bounded E. by Potosi and Enoch Winde's lot W. by Jerard Brickey's lot and hollow below said Jerard Brickey, to run to the head thereof; thence to the lots laid off by Moses Austin adjoining the town of Potosi; thence with said lots so as to include the said twelve acres.

One lot of one acre to Jerard Brickey, adjoining the said Jerard's former purchase of Moses Austin, at the lower end of his lot, the whole width thereof, it being the same tract or parcel of land purchased by Charles R. Ross as the agent of the bank of St. Louis, at sheriff's sale on the 21st day of March, 1820, and conveyed by the said Ross to the said Risdon H. Price by deed bearing date the 7th day of April, 1821, under and by virtue of a deed of release, executed to him, the president, directors, and company of the bank of St. Louis in trust for Risdon H. Price, Robert Simp'on, Samuel Hammond and Rufus Easton, and according to
99 their appointment as by reference to the deed, and authority aforesaid of record in the county of Washington will more fully appear.

The aforesaid property, or so much thereof as may be required to be sold to raise the sum of money hereinbefore named, will be struck off to the highest bidder.

Terms of sale, cash.

(Signed) BEN. STEPHENSON,
R. T. McKENNEY,
T. W. SMITH,
Trustees.

EDWARDSVILLE, *May* 18*th*, 1822.

And by virtue of the power and authority given to the said parties of the first part, as the trustees of the said bank of Edwardsville, and for the purposes in the said deed of trust from Risdon H. Price and Mary G. Price, his wife, particularly provided for and expressed, they, the said parties of the first part, did, on the twenty-seventh instant, at the house of William A. Hopkins, in the town of Edwardsville, at the hour of 12 o'clock

(noon of the same), proceed to offer for sale the whole of the property described in the said deed of trust from the said Risdon H. Price and Mary G. Price, his wife, to said parties of the first part, or so much of said property as would be sufficient to raise the sum of eighteen hundred and sixty-six dollars and sixty-six and two-thirds cents, which was the first installment provided for in said deed of trust, and which the said Risdon H. Price had neglected to pay, agreeably to the provisions of the said deed, and which had become forfeited and was then due; when and where
100 the said party of the second part was the highest bidder, for and
became the purchaser of all the property first mentioned and described in the said deed of trust and in the public advertisement above referred to at the price and for the consideration of six hundred and ten dollars, which being insufficient to pay and discharge the first installment due under the said deed of trust as aforesaid, the said parties of the first part then offered and exposed to sale, agreeably to the public advertisement above referred to, the tract of land situate in the county of Washington, in the State of Missouri, on Mine Creek, adjoining the village of Mine au Breton, being one league square, with the exceptions and reservations in said deed of trust contained and expressed, when and where the said party of the second part was the highest bidder for, and became the purchaser of, at the price and consideration of nine thousand dollars, which said respective sums the said parties of the first part as trustees as aforesaid acknowledge to have received from the said party of the second part before the delivery of this deed.

Now, therefore, in consideration of the premises, and in, under, and by virtue of the aforesaid deed of trust and public advertisement as aforesaid, the said parties of the first part, as trustees as aforesaid, have granted, bargained, and sold, aliened, enfeoffed, and confirmed, and do by these presents grant, bargain, and sell, alien, enfeoff, and confirm unto him the said party of the second part, his heirs and
101 assigns forever, all the property in the said deed of trust and in the
said advertisement designated and described, with all and singular the buildings, improvements, and appurtenances, privileges, and advantages in any wise belonging or appertaining to the same, as fully and completely as if the' were herein again specifically referred to, named, and described; to have and to hold all and singular, the lands and tenements, lots, buildings, and improvements, privileges, and advantages unto him the said party of the second part, his heirs and assigns forever, and the said parties of the first do for themselves and as trustees as aforesaid covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, have not in any wise altered, deminished, or impaired the estate so as aforesaid sold and conveyed to them as trustees for the Bank of Edwardsville as aforesaid by the said Risdon H. Price and Mary G. Price, his wife, and that the same is and shall forever be, free, quit, and discharged of, and from all and every claim or incumbrance done or suffered by them the said parties of the first part.

In testimony whereof the said parties of the first part have hereunto set their hands and seals this day and date first above-written.

BEN. STEPHENSON. [SEAL.]
T. W. SMITH. [SEAL.]
R. T. McKENNEY. [SEAL.]

Test:
B. GREEN.
WILL'M LEGGETT.

102 STATE OF ILLINOIS,
Madison County, ss:

On the twenty-ninth day of June, in the year eighteen hundred and twenty-two, personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, Benjaman Stephenson, Theophilus W. Smith, and Richard T. McKenney, grantors above-named, and acknowledged severally that they signed, sealed, and delivered the above and foregoing instrument of writing to Lewis Devotion therein named, as their free and voluntary act and deed for the uses and purposes therein mentioned.

THOS. LIPPINCOTT, *J. P.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this nineteenth day of April, in the year of our Lord eighteen hundred and thirty-six, before me, the clerk of the county court, within and for the county aforesaid, personally came Catharine W. Lippincott, a competent and credible witness, who, being by me duly sworn, deposed and said that she personally knew Richard T. McKenney, whose name is subscribed to the annexed instrument of writing (dated the twenty-ninth day of June, eighteen hundred and twenty-two, by and between Benjaman Stephenson, Richard T. McKenney, and Theophilus W. Smith, as trustees for the Bank of Edwardsville, of the first part and Louis Devotion of the second part) as party thereto, and well knows his signa-
103 ture, having often seen him write and sign his name, and that she verily believes that the name of the said Richard T. McKenney to the said instrument of writing subscribed as party was thereto subscribed by the said Richard T. McKenney; that it is commonly reported and believed that the said Richard T. McKenney is dead, and that she believes that he is dead.

And the said Catharine W. Lippincott further deposed and said that she personally knows William Leggett, whose name is subscribed to the said instrument of writing as witness, and well knows his signature, having often seen him write and sign his name, and that she verily believes that the name of the said William Leggett to the same instrument subscribed as witness was thereto subscribed by the said William Leggett, and that the said William Leggett now resides in the State of New York.

And at the same time before me came also Thomas Lippincott, a competent and credible witness, who, being by me duly affirmed, deposed and said that he personally knew Benjamin Stephenson, Richard T. McKenney, and Theophilus W. Smith, whose names are subscribed to the said instrument of writing as party, and well knows their several signatures, having often seen each one of them write and sign his name, and that he

verily believes that the names of the said Benjamin Stephenson, Richard T. McKenney, and Theophilus W. Smith to the said instrument severally subscribed as parties thereto were thereto subscribed by the said
104 Benjamin Stephenson, Richard T. McKenney, and Theophilus W. Smith, each one of them for himself; that it is commonly reported and believed that the said Benjamin Stephenson and Richard T. McKenney are both dead, and that he believes that they are dead, and that the said Theophilus W. Smith resides in Edwardsville, Illinois.

And the said Thomas Lippincott further deposeth and saith that he personally knew William Leggett, whose name is subscribed to the above-mentioned instrument of writing hereto annexed as witness, and well knows his signature, having often seen him write and sign his name, and that he verily believes that the same, *that the name* of the said William Leggett to the said instrument of writing subscribed as witness was thereto subscribed by the said William Leggett, and that the said William Leggett now resides in the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the city of St. Louis, the day and year aforesaid.

[SEAL.] HENRY CHOUTEAU, *Clerk.*

STATE OF ILLINOIS,
County of Madison, sct:

Personally appeared before the undersigned, clerk of the circuit court within & for the county of Madison, in the State of Illinois, on this twenty-fifth day of April, in the year one thousand eight hundred & thirty-six, Theophilus W. Smith, one of the grantors to the foregoing deed from himself, Benjamin Stephenson, & Richard T. McKenney
105 to Louis Devotion, who is personally known to me to be the same with the grantor of that name to said deed, & acknowledged that he signed, sealed, & delivered said deed to Louis Devotion, & acknowledged the same to be his act & deed for the uses & purposes therein mentioned. Also, at same time, appeared in their proper persons Isaac Pricketts & John T. Lusk, both competent and reliable witnesses, who, being by me sworn, deposed & said that they personally knew Benjamin Stephenson, whose name is subscribed to said deed (by & between the said Benjamin Stephenson, Theophilus W. Smith, & Richard T. McKenney, of the first part, & Louis Devotion, of the second part), as a party thereto, & well know his signature, having often seen him write & sign his name, & that they verily believe that the name of the said Benjamin Stephenson, to the said deed subscribed as party, was thereto subscribed by the said Benjamin Stephenson, & that it is commonly reported & believed that he is, & they verily believe that he is dead.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the town of Edwardsville, county of Madison, State of Missouri, the day and year aforesaid.

[SEAL.] WILLIAM E. STARR, *Clerk.*

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, recorder in and for said county, do hereby
106 certify that the foregoing deed was filed for record May 6th, 1836,

and that the same is truly recorded in my office, book C, pages 413, 414, 415, 416, 417, 418, 419.

Given under my hand and seal of office, at office, in the town of Potosi.

[SEAL.] ISRAEL McGREADY,
Recorder.

Certified copy of app'tm't of W. H. Savage as adm'r of Louis Devotion.

Certified copy of the appointment of W. H. Savage as administrator of Louis Devotion, dec'd, as follows:

STATE OF MISSOURI,
County of St. Louis, ss:

Silas Bent, clerk of the county court within and for the county of St. Louis, in the State of Missouri, to all to whom these presents shall come, greeting:

Whereas Louis Devotion, late of the county of St. Louis, deceased, died intestate, as it is said, and you, Robert Wash and William H. Savage, haven given sufficient security, I do therefor give and grant unto you, the said Robert Wash and William H. Savage, full power & authority to administer all and singular the goods, chattels, rights, and credits of the said deceased lying and being within the said county of St. Louis, and to demand, collect, and in a legal manner require and receive all and all manner of debt and debts due and owing to the said deceased, and well and faithfully to dispose of the same according to law. And lastly, I do hereby constitute and appoint the said Robert Wash and William H. Savage administrators of all and singular the goods and chattels, rights, and credits of the deceased.

107 In testimony whereof I have hereunto set my hand & seal, at St. Louis, 31st of Oct'r, in the year of our Lord one thousand eight hundred & twenty-two, and of the American Independence the forty-seventh.

[SEAL.] SILAS BENT, *Clerk*,
By JNO. BENT, *Dep. Clerk.*

Record' Nov. 3rd, 1882.

JNO. BENT, *Dep. Cl'k.*

STATE OF MISSOURI,
County of St. Louis, ss:

At a county court begun and held at the city of St. Louis within and for the county of St. Louis, on the first Monday of November, it being the second day of said month, in the year of our Lord eighteen hundred and twenty-nine, were present, Mary P. Ledue, esquire, presiding justice, Frederick Hyatt, esquire, Hartly Lanham, esquire, justices, Robert Simpson, sheriff, Henry Chouteau, clerk.

Court adjourned from day to day until Wednesday, 11th November, 1829.

WEDNESDAY, 11*th November*, 1829.

Court met pursuant to adjournment.
Present, same justices.

ROBERT WASH & WM. H. SAVAGE, ADM'R OF LOUIS DEVOTION, deceased. } On application of R. Wash to surrender letters.

On the application of Robert Wash, one of the administrators of the estate of Louis Devotion, deceased, to be permitted to resign his administration of the estate of said deceased, and to surrender his letters on the same, and on due proof that notice of his intention to apply to this
108 court for that purpose has been given agreeably to the statute in
such case made and provided, and William H. Savage, his coadministrator upon said estate acknowledging here in court to have received from the said Robert Wash the sum of fourteen hundred and forty dollars forty-eight and three-fourths cents, it being the balance found in the hands of the said Robert Wash upon the settlement of their respective administration accounts, and all and singular the premises being seen and by the court now here fully understood, and mature deliberation being thereupon had, it is the opinion of the court that the said Robert Wash ought to be allowed to do so.

Therefore it is considered by the court here that the said Robert Wash is allowed to resign his administration of the estate aforesaid, and that henceforth the power of the said Robert Wash in relation to the estate aforesaid shall cease and determine.

STATE OF MISSOURI,
County of Saint Louis, ss:

I, Henry Chouteau, clerk of the county court of the county of St. Louis, do certify that the above and foregoing is a true copy of the letters of administration as the same is of record, granted to Robert Wash and William H. Savage by the clerk of the county court for the county aforesaid, on the estate of Louis Devotion, deceased, and of the resignation of Robert Wash as one of said administrators, as the same now remain of record in my office.

109 In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in the city of St. Louis, county and State aforesaid, this first day of March, one thousand eight hundred and thirty-six.

[SEAL.] HENRY CHOUTEAU, *Clerk.*

Certified copy of petition of adm'r of L. Devotion.

Certified copy of the petition of administrator of Louis Devotion to sell land, as follows:

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that heretofore, to wit, on the eleventh day of November, in the year of our Lord one thousand eight hundred and thirty-one, William H. Savage, administrator of Louis Devotion, deceased, filed in the county court for the county of Saint Louis, in the State of Missouri, his petition for the sale of certain real estate of said deceased, which is in the words and figures following, to wit:

To the honorable the county court of St. Louis County, November term, 1831:

William H. Savage, administrator of Louis Devotion, deceased, petitioning, states that he has administered all the personal assetts which have come to his hands or possession or under his control, and that as far as he knows or believes there are no goods or chattels belonging to the estate of his intestate, and therefore he cannot present herewith an inventory. The estate is largely indebted as follows:

110 1st. To certain creditors in New York, whose claims are allowed of record in this court, amounting without interest to	15,490	82
Claim of Ballard & Wright	36	00
" Daniel Whitney	113	40
R. Wash's account	1,619	11¾
John Deane's claim	7,657	02
Making without interest	$24,816	35¾

That the credits of the estate appear in his account herewith exhibited, and amount*ing* to $15,532.68¾, so that there remains a deficiency of personal assets to the amount of $9,283.67, without calculating the interest on the contingent expenses now accruing.

And your petitioner states that there belongs to the estate of his intestate a claim to a certain tract of land in the county of Washington, called the Mine à Breton tract, and containing about one league square, excepting therefrom several smaller tracts which have been sold out of the same, the amount of which smaller tracts not known to your petitioner, which said Mine à Breton tract was originally granted to Moses Austin; that he knows of no other lands in this State belonging to said estate. Therefore, in order to pay the debts due from said estate, he prays that an order may be made to sell said tract of land according to law, &c.

WM. H. SAVAGE, *Adm'r.*
By his Att'y.

ST. LOUIS COUNTY, *sct:*

Wm. H. Savage, the above-named administrator, being duly sworn, says that the matters stated in the foregoing petition are true, and
111 that the account of his administration hereunto annexed is a true account, and contains a list of the debts due to and from the estate as far as he knows them, and that the list or description hereunto subjoined is a true statement of all the lands belonging to the estate of his estate in Missouri, as far as he knows or believes.

WM. H. SAVGE.

Sworn to and subscribed in open court, 11th November, 1831.

HENRY CHOUTEAU, *Clerk.*

Lands belonging to the estate of Louis Devotion.

A tract of land containing about one league square (excepting several smaller tracts heretofore lawfully sold out of the same), situate in Washington County, adjoining the town of Potosi, & called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin.

And afterwards, to wit, at the said November term of the said county court, on the eleventh day of November, in the year eighteen hundred and thirty-one, the said court made an order in said cause which is as follows, to wit:

Order of publication.

William H. Savage, adm'r of Louis Devotion, dec'd.

Upon the petition of William H. Savage, administrator of the estate of Louis Devotion, deceased, praying the court for an order and decree for the sale of so much of the real estate of said deceased as will pay 112 and satisfy the remaining debts due by said estate, and yet unpaid for want of sufficient assets, accompanied by the accounts, lists, and inventories required by law in such case, which being examined and by the court fully understood, and mature deliberation being thereupon had it is ordered by the court that all persons interested in the estate of said deceased be notified that application as aforesaid has been made, and that unless the contrary be shown on or before the first day of the next term of this court, to be held on the first Monday of February next a decree will be made for the sale of the whole or so much of the real estate of said deceased as shall be sufficient for the payment of said debts.

And it is further ordered by the court that this order be published in some newspaper printed in this State for six weeks successively, the last insertion to be at least two weeks before the next term of this court.

And at the February term of said county court, on the seventh day of February, one thousand eight hundred and thirty-two, the following proceedings were had in said cause, to wit:

Order of sale.

William H. Savage, adm'r of Louis Devotion, dec'd.

And now at this day comes in court William H. Savage, administrator of the estate of Louis Devotion, deceased, and proves to the satisfaction of the justices thereof that the order of publication made upon his pe- 113 tition at the last term of this court has been duly published according to law, and moves for an order of sale pursuant to said petition and notice.

Whereupon the court proceeds to hear the testimony produced and to examine the parties who appear touching the application of said administrator for the sale of real estate as in said publication mentioned.

And it being satisfactorily proved to the court that there are not sufficient personal estate effects of said deceased charged with the payment of debts nor sufficient assets in the hands of said administrator to pay the debts due by said estate, and upon due consideration it is considered, ordered, and decreed that the said administrator do, on the second day of the sitting of the circuit court of Washington County, at the next July term thereof, at the court-house door of said county, and during the sitting of said court, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, expose to sale at public vendue or outcry the following real estate in the petition of said administrator mentioned, to wit:

A tract of land containing about one league square (excepting several smaller tracts heretofore lawfully sold out of the same), situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin, and sell the same for the purposes in the said petition mentioned
114 on the following terms; that is to say, one-fourth of the purchase-money cash, and the balance on a credit of six and twelve months, to be secured by a deed of trust on the premises, first having had the same appraised according to law, and notice of the time, terms, and place of said sale published for at least four weeks successively prior to the day of sale in some newspaper printed in this State, and also by at least ten advertisements put up in the most public places in the said county for at least twenty days before the day of sale, as directed by law, and that he made return of his proceedings according to law.

And afterwards, to wit, at the February term of said county court, on the twenty-fifth day of February, in the year one thousand eight hundred and thirty-three, the following further proceedings were had in said case, to wit:

Order of sale renewed.

William H. Savage, adm'r of Louis Devotion, dec'd.

On motion of the said administrator, by Edward Bates, his attorney, and it appearing to the court that the order of sale made at the last February term of this court has not been complied with, it is considered by the court that the same be renewed.

Wherefore it is considered, ordered, and decreed that the said administrator do, on the second day of the sitting of the circuit court of Washington County, at the next July term thereof, at the court-house door of said county, and during the sitting of said court, between the hours
115 of nine o'clock in the forenoon and five o'clock in the afternoon of that day, expose to sale at public vendue or outcry the following real estate in the petition of said administrator mentioned, to wit:

A tract of land containing about one league square (excepting several smaller tracts heretofore lawfully sold out of the same), situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin, and sell the same for the purposes in the said petition mentioned on the following terms; that is to say, one-fourth of the purchase-money cash, and the balance on a credit of six and twelve months, to be secured by a deed of trust on the premises, first having had the same appraised according to law, and notice of the time, terms, and place of said sale published for at least four weeks successively prior to the day of sale in some newspaper printed in this State, and also by at least ten advertisements put up in the most publi*shed* places in the said county for at least twenty days before the day of sale, as directed by law, and that he make return of his proceedings according to law.

And afterwards, to wit, at the August term of said county court, on the 7th day of August, in the year one thousand eight hundred and thirty-three, the following proceedings were had in said case, viz:

Order of sale renewed.

William H. Savage, adm'r of Louis Devotion, dec'd.

116 On motion of said administrator, by Hamilton R. Gamble, his attorney, and it appearing to the court that the order of sale made at the February term of this court has not been complied with, it is considered by the court that the same be renewed.

Wherefore it is considered, ordered, and decreed that the said administrator do, on the second day of the sitting of the circuit court of Washington County, at the next March term thereof, at the court-house door of said county, and during the sitting of said court, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, expose to sale at public vendue or outcry the following real estate in the petition of said administrator mentioned, to wit:

A tract of land containing about one league square (excepting several smaller tracts heretofore lawfully sold out of the same), situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin, and sell the same for the purposes in the said petition mentioned on the following terms; that is to say, one-fourth of the purchase-money cash and the balance on a credit of six and twelve months, to be secured by a deed of trust on the premises, first having had the same appraised according to law, and notice of the time, terms, and place of sale published for
117 at least four weeks successively prior to the day of sale in some newspaper printed in this State, and also by at least ten advertisements put up in the most public places in the said county for at least twenty days before the day of sale, as *as* directed by law, and that he make return of his proceedings according to law.

And afterwards, to wit, at the May term of said court, on the nineteenth day of May, in the year one thousand eight hundred and thirty-four, the following further proceedings were had in said case, to wit:

Confirmation of sale.

William H. Savage, adm'r of Louis Devotion, dec'd.

In pursuance of an order of this court, of the seventh day of August last past, for the sale of certain real estate therein mentioned, late the estate of Louis Devotion, deceased, William H. Savage, administrator of said estate, makes report to the court in the words and figures following; that is to say:

To the county court of St. Louis County:

The undersigned, William H. Savage, administrator of the estate of Louis Devotion, deceased, respectfully reports that, in pursuance of the order of this court made at the last August term, of which a copy is annexed, directing the undersigned administrator to sell a certain tract of land situate in Washington County, Missouri, upon the terms in said order specified, which tract of land is described in said order as a tract containing about one league square (except several smaller tracts heretofore lawfully sold out of the same), situate in Washington County,
118 adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin, the undersigned, as administrator as aforesaid, gave notice of the time, place, and terms of the sale by a notice published in the Missouri Republican, a newspaper printed in the city of St. Louis, for four weeks successively before the day of sale, a copy of which notice, together with the proof of its publication, is herewith filed.

The undersigned also caused notice of the sale to be given by ten printed advertisements put up in the most public places in Washington County aforesaid twenty days at least before the day of sale, a copy of which advertisements, with the proof of the requisite number having been properly put up, is herewith filed.

The undersigned further reports that before he proceeded to sell the said tract of land in the said order of this court mentioned he caused the same to be appraised by Jesse McIlvaine, William Inge, and John McGready, three respectable disinterested householders in the neighborhood of the land ordered to be sold, who, after being duly sworn justly and truly according to the best of their skill and abilities to view, appraise, and value the estate shown to them by the undersigned, appraised the said tract of land in the said order of this court described, with the exception
119 of the smaller tracts sold out of the same, to the sum of nine thousand six hundred and thirty-nine dollars, which appraisement, with the oath of said appraisers, is herewith filed.

The undersigned further reports that on the second day of the sitting of the circuit court of Washington County, at the March term of the said court, in the year eighteen hundred and thirty-four, being Tuesday, the eleventh day of the said month of March, and during the sitting of said court between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the door of the court-house of the county of Washington, in this State, he exposed to sale the said tracts of land in the said order of this court specified at public vendue or outcry, and that at such sale John Deane became the purchaser of said tract at the price and sum of four thousand dollars, being the highest and last bidder therefor.

The undersigned further reports that the said Deane has paid the one-fourth of the purchase-money for said land in cash, but has not executed the deed of trust required by the order of this court, because it was considered necessary that his wife should join in that deed; and as their residence is in the city of New York & the forms of our law required an acknowledgment before a court, the undersigned supposes a delay may have been occasioned by these facts.

120 If the court shall approve the sale that has been made the undersigned submits to the court the propriety of the order to make a deed to the purchaser, being on condition of his complying with the terms of sale in such time as the court may deem reasonable.

W. H. SAVAGE.

Which report being read and heard the court do here affirm and confirm, and it is ordered that the said administrator make a deed to the said purchaser on condition that he comply with the terms of said sale or pay the purchase-money within one year from this day.

And it is considered and adjudged by the court that the sale so as aforesaid made be and remain firm and stable forever, provided the said purchaser comply with the condition above specified.

And the copy of the order of court aforesaid is as follows, to wit:

STATE OF MISSOURI,
County of St. Louis, ss:

In the county court within and for the county of St. Louis, August term, 1833. Wednesday, 7th August, 1833.

Order of sale renewed.

William H. Savage, adm'r of Louis Devotion, dec'd.

On motion of the said administrator by Hamilton R. Gamble, his attorney, and it appearing to the court that the order of sale made at the February term of this court has not been complied with, it is considered by the court that the same be renewed.

Wherefore it is considered, ordered, and decreed that the said administrator do, on the second day of the sitting of the circuit court of
121 Washington County at the next March term thereof, at the court-house door of said county, and during the sitting of said court, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, expose to sale at public vendue or outcry the following real estate in the petition of said administrator mentioned, to wit:

A tract of land containing about one league square (excepting several smaller tracts heretofore lawfully sold out of the same), situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin, and sell the same for the purposes in the said petition mentioned on the following terms; that is to say, one-fourth of the purchase-money cash, and the balance on a credit of six and twelve months, to be secured by a deed of trust on the premises, first having had the same appraised according to law, and notice of the time, terms, and place of sale published for at least four weeks successively prior to the day of sale, in some newspaper printed in this State, and also by at least ten advertisements put up in the most public places in the said county for at least twenty days before the day of sale, as directed by law, and that he make return of his proceedings according to law.

STATE OF MISSOURI,
122 *County of St. Louis, ss:*

I, Henry Chouteau, clerk of the county court within and for the county aforesaid, do hereby certify that the foregoing is a correct copy from the records of said court in my office.

Given under my hand and the seal of said court, at the city of St. Louis, this eighth day of August, in the year of our Lord eighteen hundred and thirty-three.

[SEAL.] HENRY CHOUTEAU, *Clerk.*

And the copy of the notice and proof of publication thereof is as follows, to wit:

Sale of valuable real estate.

By virtue of an order of the county court of St. Louis County, Missouri, I will sell at public vendue or outcry, at the door of the court-house of the county of Washington, in this State, on the second day of the sitting of the circuit court of Washington County, at the next March term of said circuit court, and during the sitting of said court, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, the following described real estate, to wit:

A tract of land containing about one league square (excepting several smaller tracts heretofore legally sold out of the same), situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin.

123 The terms of sale are one-fourth of the purchase-money cash, and the balance on a credit of six and twelve months, to be secured by a deed of trust on the premises.

This tract of land was selected by Moses Austin, during the existence of the Spanish Government *Government* in Louisiana, for its richness in lead ore, and there has been lead mines opened and extensively worked on it for many years. It is believed that no tract of land in the mining district of this State presents stronger inducements to the investment of capital than the one now offered for sale.

The court at which the sale is to be made commences its term on the second Monday of March next.

WILLIAM H. SAVAGE,
Administrator of Louis Devotion, dec'd.

NOV. 19TH, 1833.

STATE OF MISSOURI,
County of St. Louis:

Personally appeared before the undersigned, a justice of the peace within and for the county aforesaid, N. Paschall, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the Missouri Republican, the paper of which he is printer, for four weeks successively, the first insertion being on the nineteenth day of November, 1833, and the last insertion on the tenth day of Dec., 1833, as follows, to wit, in No. 643, Nov. 19; in No. 645, Nov. 26; in No. 647, Dec. 3; in No. 648, Dec. 10; in No. , ; in No. , ; in No. , ; in No. , ; in No. , .

N. PASCHALL.

Sworn to and subscribed before me this 6' day of May, 1834.

D. HOUGH, *J. P.*

And the copy of the notice and advertisement, and the proof of setting up the same, is as follows, to wit:

124 *Sale of valuable real estate.*

By virtue of an order of the county court of St. Louis County, Missouri, I will sell at public vendue or outcry, at the door of the court-house of the county of Washington, in this State, on the second day of the sitting of the circuit court of Washington County, at the next March term of said circuit court, and during the sitting of said court, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, the following-described real estate, to wit:

A tract of land containing about one league square (excepting several smaller tracts heretofore legally sold out of the same), situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin. The terms of sale are one-fourth of the purchase-money cash, and the balance on a credit of six and twelve months, to be secured by a deed of trust on the premises.

This tract of land was selected by Moses Austin, during the existence of the Spanish Government in Louisiana, for its richness in lead ore, and there has been lead mines opened and extensively worked on it for many years. It is believed that no tract of land in the mining district of this State presents stronger inducements to the investment of capital than the one now offered for sale.

The court at which the sale is to be made commences its term on the second Monday of March next.

125 WILLIAM H. SAVAGE,
Adm'r of Louis Devotion, dec'd.

OCTOBER 11TH, 1833.

STATE OF MISSOURI,
County of Washington, sct:

This day personally appeared before the undersigned, a justice of the peace of the county of Washington aforesaid, James C. Johnson, sheriff of the county aforesaid, who, being by me duly sworn, upon his oath says that he did put up at ten of the most public places in the county of Washington aforesaid one copy of the annexed advertisement at each of said ten places at least twenty days before the second day of the present March term of the circuit court of the county of Washington, being the day of sale mentioned in said advertisement, which was done for William H. Savage, administrator of the estate of Louis Devotion, deceased.

JAS. C. JOHNSON, *Sheriff.*

Sworn to and subscribed before me this 11th day of March, 1834.

MASON FRISSELL,
Justice of the Peace.

And the oath of the appraisers and the appraisement filed as aforesaid is as follows, to wit:

STATE OF MISSOURI,
County of Washington:

This day personally appeared before the undersigned, a justice of the peace of the county of Washington aforesaid, Jesse H. McIlvaine, William Inge, and John McGready, three householders of the county of Washington, who, being by me duly sworn, upon their oaths say that they will justly and truly, according to the best of their skill and abilities,
126 view, appraise, and value the real estate shown to them by William
H. Savage, administrator of the estate of Louis Devotion, deceased, as the estate of said Devotion.

J. H. McILVAINE.
WILLIAM INGE.
JOHN McGREADY.

Sworn to and subscribed before me this tenth day of March, 1834.

MASON FRISSELL,
Justice of the Peace.

We, the undersigned, Jesse H. McIlvaine, William Inge, and John McGready, three householders of the county of Washington, have this day viewed, appraised, and valued a tract of land situate in the county of Washington, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin, containing about one league square, excepting several smaller tracts heretofore lawfully sold out of the same, which exceptions are as follows:

One lot containing two acres and thirteen poles, owned by Israel McGready; one lot of twelve acres, sold to John Brickey; one lot of one acre, sold to Jerard Brickey; fourteen hundred and thirty-two arpens conveyed to John Rice Jones, forty-five arpens to the county of Washington, two hundred and seventeen arpens to John Perry, two hundred and forty-three arpens to Martin Ruggles, fifty-eight acres to Israel McGready, sixty-six arpens to John Brickey, three hundred and twenty-four arpens to Thompson H. Ficklin, forty-five arpens to McCormack, which said tract of land was shown to us by William H. Savage, administrator of the
127 estate of Louis Devotion, deceased, as the property of said Louis
Devotion.

And we, being duly sworn, and being altogether uninterested in the property, do appraise and value the said tract of land, with the exceptions aforesaid, to the sum of nine thousand six hundred and thirty-nine dollars ($9,639.00).

Given under our hands this tenth day of March, eighteen hundred and thirty-four.

J. H. McILVAINE.
WILLIAM INGE.
JOHN McGREADY.

STATE OF MISSOURI,
County of Saint Louis, ss:

I, Henry Chouteau, clerk of the county court for the county of Saint Louis, do certify that the above and foregoing is a true copy of the record and proceedings on the petition of William H. Savage, administrator of Louis Devotion, deceased, for the sale of land belonging to the estate of said deceased.

In testimony whereof I have hereunto set my hand and affixed the seal of the said county court, at office in the city of St. Louis, county and State aforesaid, this twelfth day of March, one thousand eight hundred and thirty-six.

[SEAL.] HENRY CHOUTEAU, *Clerk.*

Certified copy of deed of adm'r of Louis Devotion to John Deane.

128 Certified copy of deed by administrator of Louis Devotion to John Deane, as follows:

This deed, made this twenty-sixth day of May, in the year eighteen hundred and thirty-five, witnesseth:

That whereas the county court of St. Louis county, at the August term of said court, in the year eighteen hundred and thirty-three, did order and decree that William H. Savage, administrator of the estate of Louis Devotion, deceased, should expose to sale at public vendue or outcry, on the second day of the sitting of the circuit court of Washington County, at the then next March term thereof, at the court-house door of said county, and during the sitting of said circuit court, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, the following real estate, to wit:

A tract of land containing about one league square (excepting several smaller tracts heretofore lawfully sold out of the same), situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin, which said sale was directed to be made on certain terms in the said order and decree specified, as by reference to a copy thereof hereto annexed and forming part and parcel of this deed will more fully appear.

129 And whereas before the day of sale in said order specified the said William H. Savage, administrator as aforesaid, did cause the said real estate in the said order and decree mentioned to be appraised by Jesse McIlvaine, William Inge, and John McGready, three respectable and disinterested householders in the neighborhood of the land ordered to be sold, who appraised the same to the sum of nine thousand six hundred and thirty-nine dollars, as by reference to their appraisement now on file in said county court will more fully appear.

And whereas the said William H. Savage, administrator as aforesaid, did cause public notice of the time, place, and terms of said sale to be given by a publication in the Missouri Republican, a newspaper printed in this State, for at least four weeks successively prior to the day of sale, and also by at least ten advertisements put up in the most public places in Washington County for at least twenty days before the day of sale, a copy of which said notice is hereto annexed and forms part of this deed, the publication in the newspaper and the advertisements set up being the same except in date.

And whereas, at the said time and place in the said decree and notice specified, and upon the terms in the said decree directed, the said William H. Savage, administrator as aforesaid, did expose the said real estate 130 in the said decree specified to sale at public vendue or outcry, and John Deane became the purchaser thereof at the price and sum of four thousand dollars, being the highest and last bidder therefor:

Now, therefore, this deed witnesseth, that for and in consideration of the said sum of four thousand dollars to the said William H. Savage, administrator as aforesaid, well and truly paid, and in pursuance of the order of said county court directing the said administrator to make a deed to the said Deane for the premises sold as aforesaid, the said William H. Savage, administrator as aforesaid, does by these presents bargain, sell, and convey unto the said John Deane and his heirs all the right, title, and interest which the said Louis Devotion had in and to the premises so sold as aforesaid, together with all the rights, privileges, or appurtenances thereunto belonging: To have and to hold the said real estate in the said order of the said county court described, with all privileges and rights thereunto belonging, unto the said John Deane and his heirs forever.

In testimony whereof the said William H. Savage, administrator as aforesaid, has hereto set his hand and seal the date before written.

WM. H. SAVAGE. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

131 Be it remembered that on this twenty-eighth day of May, in the year of our Lord eighteen hundred and thirty-five, before me, the clerk of the county court within and for the county aforesaid, came William H. Savage, who is personally known to be the person whose name is subscribed to the foregoing instrument of writing as having executed the same, and acknowledged the said instrument to be his act and deed, hand and seal, for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of St. Louis, the day and year aforesaid.

[SEAL.] HENRY CHOUTEAU, *Clerk.*

Order of sale renewed.

William H. Savage, adm'r of Louis Devotion, dec'd.

STATE OF MISSOURI,
County of St. Louis, ss:

In the county court within and for the county of St. Louis. August term, 1833.

WEDNESDAY, *7th August*, 1833.

On motion of the said administrator, by Hamilton R. Gamble, his attorney, and it appearing to the court that the order of sale made at the February term of this court has not been complied with, it is considered by the court that the same be renewed.

Wherefore it is considered, ordered, and decreed that the said administrator do, on the second day of the sitting of the circuit court of Washington County, at the next March term thereof, at the court-house door
132 of said county, and during the sitting of said court, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, expose to sale at public vendue or outcry the following real estate in the petition of said administrator mentioned, to wit:

A tract of land containing about one league square (excepting several smaller tract' heretofore lawfully sold out of the same, situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin, and sell the same for the purposes in said petition mentioned on the following terms, that is to say, one-fourth of the purchase-money cash, and the balance on a credit of six and twelve months, to be secured by a deed of trust on the premises, first having had the same appraised according to law, and notice of the time, terms, and place of said sale published for at least four weeks successively prior to the day of sale in some newspaper printed in this State, and also by at least ten advertisements put up in the most public places in the said county for at least twenty days before the day of sale, as directed by law, and that he make return of his proceedings according to law.

Sale of valuable real estate.

133 By virtue of an order of the county court of St. Louis County, Missouri, I will sell at public vendue or outcry, at the door of the court-house of the county of Washington, in this State, on the second day of the sitting of the circuit court of Washington County, at the next March term of said circuit court and during the sitting of said court, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, the following-described real estate, to wit:

A tract of land containing about one league square (excepting several smaller tracts heretofore legally sold out of the same), situate in Washington County, adjoining the town of Potosi, and called the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin. The terms of sale are one-fourth of the purchase-money cash, and the balance on a credit of six and twelve months, to be secured by a deed of trust on the premises.

This tract of land was selected by Moses Austin, during the existence of the Spanish Government in Louisiana, for its richness in lead ore, and there has been lead mines opened and extensively worked on it for many years. It is believed that no tract of land in the mining district of this State presents stronger inducements to the investment of capital than the one now offered for sale.

134 The court at which the sale is to be made commences its term on the second Monday of March next.

WILLIAM H. SAVAGE,
Administrator of Louis Devotion, Dec'd.

NOV. 19TH, 1833.

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, recorder in and for said county, do hereby certify that the within deed from Wm. H. Savage, adm'r of Louis Devotion, dec'd, to John Deane was filed for record July 11th, 1835, and that the same is truly recorded in my office, book C, pages 334, 335, 336, & 337.

Given under my hand and seal of office, at office, in the town of Potosi, the day and year aforesaid.

[SEAL.] ISRAEL McGREADY, *Recorder.*

DEFENDANTS' SECOND CHAIN OF TITLE.

Parole proof that the sole heirs of John Deane, dec'd, are Margaret B. Deane, Annie Deane, Fannie Deane, now wife of Charles H. Mallery, and John B. Deane.

Defendants put in a second chain of title as follows, viz:

134½ *Defendants put in a second chain of title as follows, viz:*

135 *Cert'f'd copy deed Moses Austin & wife to James Bryan & Rufus & Levi Pettibone.*

Certified copy of deed of Moses Austin and wife to James Bryan & Rufus & Levi Pettibone, conveying the whole claim of 7,153 arpents.

This deed, made this fifteenth day of February, in the year of our Lord one thousand eight hundred and & twenty, between Moses Austin, of Herculaneum, in the county of Jefferson & Territory of Missouri, and Mary, his wife, of the one part, and James Bryan and Levi Pettibone and Rufus , of the other part, witnesseth:

That the said Moses Austin and Mary Austin, for and in consideration of the sum of twenty-one thousand dollars to them in hand paid, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, & sold, and by these presents do grant, bargain, and sell unto the said James Bryan, Levi Pettibone, and Rufus Pettibone, their heirs and assigns, forever, the whole of that certain tract of land heretofore granted to the said Moses Austin by the Spanish Government, and confirmed to him by the Government of the United States, containing seven thousand one hundred and sixty arpens, and being one league square, situated at and near Mine à Burton, in the county of Washington and Territory aforesaid, being the only concession from the Spanish Government to the said Moses Austin, and it is the intention of the said Moses Austin and
136 Mary Austin to convey by these presents to the said James Bryan,
Levi Pettibone, & Rufus Pettibone, their heirs and assigns, the whole of the said tract, except such parcels thereof as the said Moses has heretofore sold and conveyed, and are hereafter excepted, to wit: to John Rice Jones, fourteen hundred & thirty-two arpens; to the county of Washington, forty-five arpens; to a Mr. Perry, two hundred and sixteen arpens; to a Mr. Ruggles, two hundred and forty-three arpens; to Mr. McGready, fifty-three arpens; to John Brickey, sixty-six arpens; to John Bricky' son, four arpens; to Mr. Ficklin, three hundred twenty-four arpens; to Mr. McCormack, forty-five arpens; to Mr. Brock, one hundred and sixteen arpens, which said several pieces of land above named and excepted

are severally described in the deeds and contracts to the said purchasers for the same.

And further the said Moses Austin will not warrant and defend the said premises hereby conveyed against the following judgments and mortgage, to wit:

One judgment in favour of the Bank of St. Louis against the said Moses Austin, obtained in the superior court of the said Territory, for about fourteen thousand dollars; three judgments in favour of the estate of one Gamble, in Virginia, against the said Moses Austin, rendered in
137 the said superior court for *for* one thousand and twenty-nine dollars each or thereabouts, and one judgment in favour of Alexander McNair against the said Moses Austin, in the said superior court, for about four hundred and fifty dollars, and one mortgage in favour of the Bank of St. Louis upon a part of the said tract executed by the said Moses Austin to secure the payment of about twelve thousand dollars, which is, however, the same debt for which the judgment above mentioned in favor of the said Bank of St. Louis has been obtained, and is included in that judgment, but as against the same judgments and mortgage the said James, Levi, & Rufus agree to take the said premises hereby conveyed at their own risk & hazzard without recourse to the said Moses Austin.

To have and to hold the said premises above described and conveyed, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, unto them, the said James Bryan, Levi Pettibone, & Rufus Pettibone as tenants in common, the said James Bryan to have and to hold an undivided half of the said premises, and the said Levi Pettibone and Rufus Pettibone to have and to hold an undivided fourth part each of the said premises, and to the sole and only proper use, benefit, and behoof of the said James Bryan, Levi Pettibone, and Rufus Pettibone, their heirs & assigns, forever.

138 In testimony whereof the said Moses Austin & Mary Austin have hereunto set their hands & seals the day & year first above-written.

MOSES AUSTIN. [SEAL.]
MARY AUSTIN. [SEAL.]

Signed, sealed, and delivered in presence of—
SAM. WOODSON.

TERRITORY OF MISSOURI,
County of Jefferson:

This day personally appeared before me, the clerk of the circuit court within and for the county of Jefferson, the above-named Moses Austin and Mary Austin, his wife, and acknowledged the foregoing deed or instrument of writing to be their and each of their acts and deeds, hands and seals, for the purpose therein mentioned, and the said Mary being by me separately and apart from her said husband examined, and being acquainted with the contents thereof, says she executed the same freely and voluntarily without the compulsion or undue influence of her husband.

Given under my hand and private seal, having no seal of office, this fifteenth day of February, eighteen hundred and twenty.

SAM. WOODSON, *Clerk.*

Recorded bearing date February the 29th, 1820.

JOHN BRICKEY, *Recorder.*

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, recorder in and for said county, do hereby 139 certify that the foregoing is a true copy of the deed from Moses Austin & wife to James Bryan et al. as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed my seal of office this 3rd day of June, 1836.

[SEAL.] ISRAEL McGREADY, *Recorder.*

Certified copy of bill in equity, in case Pettibone et al. vs. Price et al.

Certified copy of bill in equity, viz, Rufus Pettibone et al. vs. Risdon H. Price et al. & decree on same, as follows:

STATE OF MISSOURI,
County of St. Louis:

Be it remembered that heretofore, to wit, on the fourteenth day of January, in the year of our Lord eighteen hundred and twenty-two, was filed in the office of the clerk of the superior court of chancery within and for the then third judicial district of the State of Missouri a bill of complaint, which is in words and figures following, to wit:

Bill in chancery.

To the honorable William Harper, chancellor of the State of Missouri:

Humbly complaining, show unto your honor, your orators Rufus Pettibone and Levi Pettibone, that heretofore, to wit, on or about the fifteenth day of February, in the year of our Lord one thousand eight hundred and twenty, they, in conjunction with one James Bryan, purchased of Moses Austin a certain tract of land heretofore granted to the said Moses 140 Austin by the Spanish Government, and confirmed to him by the Government of the United States, containing seven thousand one hundred and sixty arpens, being one league square, situate at and near the Mine à Burton, in the county of Washington, and now the State of Missouri, and being the only concession from the Spanish Government to the said Moses Austin, excepting, however, such parcels of the said tract as the said Moses Austin had before then sold and conveyed, and which exceptions were enumerated as follows, to wit: To John Rice Jones, fourteen hundred and thirty-two arpens; to the county of Washington, forty-five arpens; to a Mr. Perry, two hundred and sixteen arpens; to a Mr. Ruggles, two hundred and forty-three arpens; to Mr. McGready, fifty-eight arpens; to John Brickey, seven'-four arpens; to Mr. Fecklin, three hundred and twenty-four arpens; to Mr. McCormack, forty-five arpens; to Mr. Brock, one hundred and sixteen; which said tract of land was conveyed to your orators and the said James Bryan by deed executed by the said Moses Austin and Mary, his wife, which said deed bears date the fifteenth day of February, in the year of our Lord one thousand eight hundred and twenty, and is prayed to be taken as part and parcel of this bill, and a copy of the same is herewith annexed, marked "A."

Your orators also, in conjunction with the said James Bryan,
141 purchased one other tract of land, containing six hundred and forty
acres, situated in the county of Washington aforesaid, at the same time and as a part of the same contract with the other purchase of the said Moses Austin above mentioned, being a tract of land heretofore granted by the Spanish Government to one Darius Shaw, and confirmed to him by the Government of the United States, and is situated about one or two miles from the village of Potosi, on the road to St. Genevieve, and is commonly known by the name of the Shaw tract, which said tract of land, however, was conveyed to your orators and the said James Bryan by Elias Bates and Ann E. Bates, his wife (who were the legal owners of the same), for the aid and benefit of the said Moses Austin, the deed for which said last-mentioned tract is herewith exhibited, marked "B," and is prayed to be taken as part and parcel of this bill of complaint. Your orators purchased each one individual fourth part of the said lands and the said James Bryan one individual half.

Your orators also shew unto your honor that at the time of the purchase of the said tracts of land above mentioned the president & directors of the Bank of St. Louis had a judgment against the said Moses Austin for a
little more than fourteen thousand dollars, which judgment was a
142 lien upon the said Mine à Burton tract of land first-above men-
tioned, and subject to which lien the said land was conveyed; that there were certain other judgments also against the said Moses Austin amounting at that time to more than four thousand dollars, which were specified in the said deed of conveyance for the said tract of land first above mentioned, against which payment your orators and the said James Bryan agreed to take the said land at their own ris*que* and hazard, without recourse to the said Moses Austin.

Your orators further state that they and the said James Bryan were to pay to the said Moses Austin for the said lands two thousand five hundred dollars, and to take the said land at their risk as respected the said judgments; that your orators and the said James Bryan paid to the said Moses the said two thousand five hundred dollars, according to their agreement, the one-half being paid by your orators and the other half by the said James.

Your orators also state that at the time of the purchase and conveyance of the said tracts of land above mentioned it was a part of the agreement that the said Moses Austin should convey to your orator and to the said James Bryan his capital stock in the Bank of St. Louis, amounting, according to his statement, to one hundred and three share', of one hun-
143 dred dollars each, to enable your orators and the said James to off-
set the said stock against the said judgment.

Your orators also state that the said Moses Austin made an assignment, according to the said agreement, of one hundred and three shares of bank stock in the said bank to your orators and the said James Bryan; but that when your orators presented the said assignment at the said bank for the purpose of having them transferred to your orators and the said James Bryan, they were then told by William M. O'Hara, who pretended to examine the books of the bank for that purpose, that the said Moses Austin had not so much stock by nineteen shares.

Your orators further state that after the said representation of the said

Wm. M. O'Hara as to the amount of the said stock, he made a proposition to your orators, in behalf of the said bank, that if your orators would not attempt to obtain an injunction against the said bank judgment for the amount of the said stock that the said bank should secure to your orators the amount of their advances to the said Moses Austin for the said lands, provided the said lands should be sold on the said judgment.

Your orators being disappointed as to the amount of the said bank stock which they supposed they would be enabled to off-set against the said 144 judgment, were induced to listen to the said proposition, and more especially as your orators were informed and believed to be true that it would be utterly out of the power of the said James Bryan to make his share of the advances necessary to redeem the land from the said judgment.

Your orators, therefore, finally agreed with the said Bank of St. Louis that if they would secure to your orators one thousand dollars to be paid to your orators over and above the interest of your orators in the Shaw tract above mentioned, they would not attempt to enjoin the said judgment, or any part thereof; and thereupon the president and directors of the bank of St. Louis, in consideration of the said agreement of your orators, passed a resolution in favor of your orators, as follows, viz:

BANK OF ST. LOUIS, 11*th March*, 1820.

Whereas at the last supreme court holden at St. Louis, in the Territory of Missouri, a judgment was rendered against Moses Austin, at the suit of the president, directors, and company of the Bank of St. Louis, for about fourteen thousand dollars;

And whereas, subsequent to the date of said judgment, the said Moses Austin became indebted to Rufus Pettibone and Levi Pettibone for moneys advanced by them to the said Austin, for which moneys they have 145 received a conveyance of two undivided fourth parts of six hundred and forty acres of land in the county of Washington; but the said land being insufficient to secure them, this board feel disposed to give them relief, and to afford a lien, jointly with the said president, directors, and company of the Bank of St. Louis, on the lands and tenements and property of the said Austin in the Territory of Missouri;

And whereas the said Rufus and Levi have, since the rendering of the said judgment, received a deed from the said Austin for two undivide' fourth parts of the said Austin's Mine à Breton estate, so situated in the county of Washington as aforesaid:

Now, therefore, it is resolved that if the said Pettibone have such a deed of conveyance from the said Austin, and provided no delay shall take place in the sale of said property by virtue of or in consequence of any writs of injunction or supersedeas, then the said Rufus and Levi shall be considered as having a lien on all the landed and other property of the said Austin equally & jointly (in proportion to the amount of his demand not secured as aforesaid) with the lien afforded to the said president, directors, and company by the judgment aforesaid obtained by them against the said Austin and the said Rufus and Levi shall be entitled to dividends 146 out of the moneys from time to time raised out of the property of said Austin, proportionate to the amount due to the said Bank of

St. Louis and the amount due and not secured to the said Pettibone from the said Austin.

And it is hereby understood that the sum to be secured to the said Rufus & Levi mentioned in the foregoing resolution shall be one thousand dollars, without further investigation. And if the said property shall be purchased in for the said bank, the said Rufus & Levi shall be entitled to an undivided share of the said property in the said proportions as the said sum of one thousand dollars is to the said debt of said bank.

(Signed) RISDON H. PRICE, *President.*
S. HAMMOND,
WM. M. O'HARA,
CLEMENT MARCH,
THEODORE HUNT,
ABIJAH HULL,
ROBERT SIMPSON,
Directors of the Bank of St. Louis.

Your orators further state that the said Moses Austin was made acquainted with the said resolution by your orators and approved of the same.

Your orators further state that they obtained no writs of injunction or supersedeas against the said judgment, nor was any delay attempted or produced in the sale of the said property under the said judgment, but at the March term of the circuit court for the county of Washington, in the year
of our Lord one thousand eight hundred and twenty, being
147 the first court at which a sale would take place after the passing of
the said resolution, the said president, directors, and company of the Bank of St. Louis caused the said Mine á Burton tract above mentioned to be sold on an execution issued upon the said judgment, and the same was purchased in for the said bank by Charles R. Ross, the agent for the said bank, for the sum of seven thousand dollars or thereabouts; that shortly after the said sale the said property was conveyed by the said Charles R. Ross to Risdon H. Price, Samuel Hammond, and Robert Simpson, a committee of the said bank appointed to settle and adjust the concerns of the said bank; that the said committee afterwards sold the said property to Risdon H. Price, above named, for the sum of eleven thousand dollars or thereabouts, under an express understanding, however, at the time of the said sale, that the said property was sold subject to the claims of your orators as above set forth; that the said bank enjoyed the premises and took the rents, issues, and profits thereof until the said sale to the said Risdon H. Price.

Your orators further state unto your honor that the said Risdon H. Price continued the owner of the said property, and took and enjoyed the
rents, issues, and profits thereof, until on or about the seventh of
148 April, one thousand eight hundred and twenty-one, at which time
a deed was executed by the said Risdon H. Price and his wife, by which deed the said Mine à Breton tract was conveyed, with other property, to Benjamin Stepenson, Richard T. McKinney, and Theophilus W. Smith, in trust for the use of the president, directors, & company of the Bank of Edwardsville, without any reservation of the right of your orators specified in said deed; that the said Risdon H. , however, *that* the said

Stevenson, McKinney, and Smith of the claim of your orators as and before the execution of the said last-mentioned deed, as your orator has been informed and believes; and that the said Stepenson, McKinney, and Smith are still the owners of the said Mine à Breton tract in truth as aforesaid, and have taken the rents and profits to the present time, they being officers and directors of the said Bank of Edwardsville.

Your orators further state that no part of the said Mine a Breton tract has ever been conveyed to your orators since the sale under the said judgment, nor has any part of the money for which the same was sold ever been paid to your orators, although your orators have often requested and demanded a conveyance of their proportion of the said property or 149 the payment of their demands according to the resolution above set forth, which request has been made not only of the president, directors, and company of the Bank of St. Louis, while they were the owners of the said property, and also of the said Risdon H. Price, Samuel Hammond, and Robert Simpson, the said committee above mentioned, while they were the legal owners of said property, but likewise of the said Risdon H. Price since he had become the purchaser of the said property, and while owner of it, all of whom acknowledged the justice of the claim of your orators as above set forth, but have always, under divers frivolous pretences, postponed doing justice to your orators "till a more convenient season."

But now so it is, if it please your honor, that the said Risdon H. Price, Benjamin Stephenson, Richard T. McKinney, Theophilus W. Smith, and the president, directors, and company of the Bank of Edwardsville, combining and confederating with divers other persons at present unknown to your orators, whose names when discovered your orators pray may be inserted in this bill and they made parties hereto, with apt words to charge them, now to injure and oppress your orators in the premises have refused to do your orators justice. Especially the said Risdon H. Price did, before the conveyance last above mentioned, and now doth, utterly refuse to con- 150 vey to your orators their proportionate share of the property above mentioned, or to pay them the value thereof, or to account to them for their proportion of the rents and profits of said Mine à Breton tract while in his hands and name, and the said Benjamin Stephenson, Richard T. McKinney, and Theophilus W. Smith, & the said president, directors, and company of the Bank of Edwardsville do refuse to make to your orators a conveyance of their said share of the said tract, or to satisfy them in money for the same, with the said Price sometimes falsely pretending that he, the said Price, did not buy the said property subject to the said claim of your orators, at other times acknowledging that he did take the property subject to the said claim, but that your orators have no claim, that your orators never paid anything for the said land to the said Moses Austin, and that the said agreement was obtained by your orators from the said Bank of St. Louis by fraud and misrepresentation, and at other times pretending that the agreement was a foolish one on the part of the said bank, and therefore that he, the said Price, was not bound to fulfill it, nor they, the said Stephenson, Smith, McKinney, & Bank of Edwardsville; at other times pretending that although your orators had paid the money for the land to the said Moses Austin, as they have stated, yet it had 151 done the said Austin no good, and therefore your orators ought not to be remunerated under the said resolution; they, the said Smith, McKinney, Stephenson, & president, directors, & company of the Bank of Edwardsville, also pretending that they had no notice of the claim of your orators under the said resolution, whereas your orators charge that they were informed of the said claim at or before the time of the said conveyance of Price above mentioned to the said Stephenson, McKinney, & Smith for the use of the said Bank of Edwardsville, all which actings and doings are against equity and good conscience.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises, the strict rules of the common law cannot compel the strict performance of the said agreement or procure an equivalent in damages, and on account of the rents, issues, and profits of such part of said Mine à Breton tract as your orators are entitled to but by the aid and assistance of this honorable court, where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said Risdon H. Price, Benjamin Stevenson, Richard T. McKinney, Theophilus W. Smith, and their confederates, when discovered, may, upon their corporal oaths, and the said president, directors, and company, under their corporate seal, may true, 152 full and proper answers make to all and singular the matters aforesaid, and more particularly that the said Risdon H. Price may set forth and discover—

Whether he did not sign the said resolution or agreement, above set forth;

Whether he was not then president of the Bank of St. Louis;

Whether Samuel Hammond, Wm. M. O'Hara, Clement March, Theodore Hunt, Abijah Hull, and Robert Simpson were then directors of the said bank, and whether they signed the said resolution or agreement;

Whether the said Mine à Breton tract was sold under an execution on the said bank judgment, as is above set forth;

Whether the same was not bid in for the said bank;

Whether the same has not been subsequently conveyed to the said Risdon H. Price, and whether the same was not conveyed to him upon the express terms that he was to satisfy the claim of your orators as above stated;

Whether he has not been often requested and demanded to satisfy the said claims of your orators previously to the filing of this bill, and whether he has not refused so to do;

Whether he hath not been thus requested and hath not been refused before his conveyance of the said tract to Stephenson, Smith & McKinney as above stated;

Whether he did not make such conveyance; at which time; on what consideration;

Whether he hath now any interest in law or equity to said Mine à Breton tract?

153 Whether he has not taken the rents, issues, and profits of said tract; for how long a time, and to what amount;

And that the said Stephenson, Smith, & McKinney may set forth and discover whether the said Mine à Breton tract was thus conveyed to them by the said Price as above stated; for what consideration and at what time;

Whether they or either of them had any knowledge, information, or belief, at or before the time of said last-mentioned conveyance, that your orators had any lien on the said tract, or any claim to it, or that in law or equity ought to be satisfied out of it, or ought to have been satisfied out of it while it was in the hands of said Price;

And whether they are not now the legal owners of said tract; if not, to whom they have conveyed it; and that the said Price may be decreed to account for the rents, issues, and profits of said tract while in his hands, and that your orators may be paid thereout what shall appear to be their proportion under the said resolution; and that the said Stephenson, McKinney, & Smith may be decreed to convey to your orators, by a good and sufficient deed, their proportion of said mine à Breton tract; and that the said president, directors, & company of the Bank of Edwardsville
may join in the conveyance, and that they also may account for the
154 rents, issues, and profits of the said tract since its conveyance to
the said Smith, Stephenson, & McKinney and pay to your orators
the portion which in equity belongs to them; and that your orators may have such further and other relief in all and singular the premises as the nature and circumstances of their case require and to your honor shall seem meet—

May it please your honor to grant unto your *honors* the most gracious writ of subpœna of the State of Missouri, to be directed to the said Risdon H. Price, Robert Simpson, & the president, directors, and company of the Bank of Edwardsville, thereby commanding them, at a certain day and under a certain pain therein to be inserted, personally to be and appear before your honor in this honorable court, then and there to answer the premises, and to stand to and abide by such order and decree therein as to your honor shall seem agreeble to equity and good conscience. And your orators shall ever pray, &c.

FARRIS & SPALDING,
Solicitors & of Counsel for Comp't.

EXHIBIT B.

This deed, made the fifteenth day of February, in the year of our Lord one thousand eight hundred and twenty, between Elias Bates, of Herculaneum, in the county of Jefferson and Territory of Missouri, and Ann
C. Bates, his wife, of the one part, and James Bryan, of St. Gene-
155 vieve County, in the Territory of Missouri, & Levi Pettibone &
Rufus Pettibone, both of St. Louis, in the Territory aforesaid, of
the other part, witnesseth:

That the said Elias Bates & Ann C. Bates, for and in consideration of one thousand four hundred dollars to them in hand paid by the said James Bryan, Levi Pettibone, and Rufus Pettibone, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said James, Levi, & Rufus, their heirs & assigns forever, a certain tract of land, containing six hundred and forty acres, situated in the county of Washington, in the Territory of Missouri aforesaid, and is the same tract of land heretofore granted by the Spanish Government to David Shaw and confirmed to him by the Government of the United States, and is the same tract on which

James Austin formerly resided, & was conveyed to me by Moses Austin, as by his deed will more fully appear (the said tract of land is situated about one or two miles from the village of Potosi, on the road to Ste. Genevieve, and is commonly known by the name of Shaw tract), together with all and singular the rights, privileges, and appurtenances thereunto belonging or in any wise appertaining; to have and to hold the said premises, with the rights, privileges, and appurtenances, unto them, the
156 said James, Levi, & Rufus, their heirs & assigns forever, as tenants
in common, the said James Bryan to have and to hold an undivided half of the said premises and the said Levi Pettibone & Rufus Pettibone to have and to hold an undivided fourth part each of the said premises, and to the sole and only proper use, benefit, & behoof of the said James Bryan, Levi Pettibone, & Rufus Pettibone, their heirs and assigns forever.

But the said Elias Bates does not mean to warrant the title to the said premises generally, but it is his intention merely to convey all the right & title which was conveyed to him by the said Moses Austin, quitclaim his right to the said premises, & covenanting that he hath in no wise incumbered the said premises, nor hath he heretofore sold the same or done any act whatever to impair the title to the said premises.

In testimony whereof the said Elias Bates and Ann C. Bates have hereunto set their hands and seals the day and year first above written.

ELIAS BATES. [SEAL.]
ANN C. BATES. [SEAL.]

Signed, sealed, and delivered in presence of—
SAM'L WOODSON.

TERRITORY OF MISSOURI,
County of Jefferson:

This day personally appeared before me, the clerk of the circuit court within and for the county of Jefferson, the aforementioned Elias Bates and Ann C. Bates, his wife, and acknowledged the foregoing deed
157 or instrument of writing to be their and each of their acts and
deeds, hands and seals, for the purposes therein mentioned.

And the said Ann E. being by me examined separately and apart from her said husband, & being acquainted with the contents thereof, says she executed the same freely & voluntarily without the compulsion or undue influence of her husband.

Given under my hand & private seal (having no seal of office) this fifteenth day of February, eighteen hundred & twenty.

SAM. WOODSON, *Clerk.*

Recorded bearing date March 1st, 1820.

JOHN BRICKEY, *Recorder.*

STATE OF MISSOURI,
Washington County:

I do hereby certify that the is a true and correct copy of a deed recorded in my office on the first of March, 1820, in book A, pages 457 & 458.

JOHN JONES, [SEAL.]
Clerk C. C. C. W.

And afterwards, to wit, on the sixteenth day of January, in the year eighteen hundred and twenty-two, the following summons issued, to wit:

Summons.

THIRD JUDICIAL DISTRICT, *sct:*

The State of Missouri to the sheriff of St. Louis County, greeting:

You are hereby commanded to summon Risdon H. Price, Benjamin Stephenson, Richard T. McKinney, Theophilus W. Smith, and the president, directors, and company of the Bank Edwardsville, that laying all
other matters aside and notwithstanding any other excuse they be
158 and appear before the chancellor of our superior court of chancery
at the next term thereof, to be held at the town of St. Louis, within and for the district aforesaid, on the first Monday of February next, then and there to answer unto a bill of complaint exhibited against them in said court by Levi Pettibone & Rufus Pettibone; and have you then and there this writ.

In witness whereof David Holmes Conrad, clerk of said court, hath hereto affixed his private seal (no seal of court being yet provided) at office, St. Louis, this 16th day of January, A. D. 1822, and of the State the second.

D. H. CONRAD, [SEAL.]
C. C. C. B. & D.

On which said writ of subpœna was endorsed the following sheriff's return, to wit:

Return.

Executed this writ on Risdon H. Price by giving him a copy of the bill of complaint and his acknowledging service on the 17th January, 1822, in the township of St. Louis. The other defendants not found in my county.

JNO. K. WALKER, *D. Sh'ff.*

And afterwards, to wit, at a term of the superior court of chancery of the State of Missouri, held at the town of St. Louis before the honorable William Harper, chancellor, to wit, on Wednesday, the 13th March, 1822, the following proceedings were had in said cause, to wit:

This cause on this day to be heard on motion of Mr. Spalding, being of
counsel for the complainants, and it appearing to the satisfaction
159 of the court that the said Risdon H. Price, although served with a
subpœna, has not appeared and filed his answer to the complainants' bill of complaint as prescribed by law.

Whereupon it was prayed that the allegations in said bill contained should be taken as confessed as to the said Risdon H. Price, unless he shall answer said bill at the next term and comply with all the other requisites of the law in such case provided, which is ordered accordingly.

And on the same day and year last aforesaid the following proceedings were had, to wit:

SAME }
vs. }
SAME. }

Leave is given to said complainants to amend their bill instanter by inserting the name of Robert Simpson as defendant.

And on the same day and year the following further proceedings were had, to wit:

LEVI & RUFUS PETTIBONE
against
RISDON H. PRICE, BENJAMIN STEPHENSON,
Richard T. McKinney, Theophilus W. Smith,
and the Bank of Edwardsville.

Upon motion of Mr. Spalding, being of counsel for the complainants, this day made, it was alleged that Benjamin Stephenson, Richard T. McKinney, Theophilus W. Smith, and the president, directors, and company of the Bank of Edwardsville, defendants in this cause, have not appeared and answered the complainants' bill of complaint; and, moreover, that they do not reside within this State.

Whereupon it is ordered that the complainants cause public no-
160 tice to be given in some one of the public newspapers printed in
this State for at least eight weeks successively; that unless they,
the said defendants, shall appear and file their answers on or before the first day of the next term of this court that the said bill will be taken for confessed and a decree entered up accordingly.

And afterwards, to wit, on the 16th day of March, 1822, the following further proceedings were had, to wit:

LEVI & RUFUS PETTIBONE
against
RISDON H. PRICE & OTHERS.

By consent of parties, by their solicitors, leave is given to the said Price, one of the defendants, to file his answer to said bill with the clerk in vacation at least one month previous to the first day of the next term of this court.

And accordingly, on the 17th day of May, 1823, the following answer of the said Price to said bill of complaint was filed in the office of the clerk of said court of chancery, to wit:

LEVI PETTIBONE & RUFUS PETTIBONE
vs.
RISDON H. PRICE, BENJAMIN STEPHENSON,
Richard T. McKinney, Theophilus W. Smith,
and the Bank of Edwardsville.

In chancery.

The separate answer of Risdon H. Price, one of the defendants to the bill of complaint of Levi and Rufus Pettibone, complainants.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception that

can or may be taken to the many errors, uncertainties, insuffi-
161 ciencies, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth & saith:

That true it is that the said Moses Austin and Mary, his wife, did convey to the said complainants and James Bryan the said tract of land in the said bill of complaint mentioned by deed bearing date the fifteenth day of February, in the year of our Lord eighteen hundred and twenty, and that the said exhibit marked "A" is a true copy of the said deed; and the defendant also admits that the said tract of land called the Shaw tract in the said bill of complaint mentioned was held by the said Elias Bates in trust for the said Moses Austin, and that the said Elias Bates and Ann C., his wife, did convey the same to the said James Bryan and the said complainants, as in said bill of complaint is set forth by and bearing date the fifteenth day of February, in the year of our Lord eighteen hundred and twenty, and that the said exhibit marked "B" is a true copy of said deed.

This defendant also admits that at the time of the conveyances aforesaid the president, directors, and company of the Bank of St. Louis had obtained a judgment against the said Moses Austin for fourteen thousand dollars and upwards, which said judgment was a lien upon the
162 said first above-mentioned tract of land, as in the said bill of complaint is set forth, and that the same was conveyed as aforesaid subject to the said lien, and this defendant expressly charges that the said complainants had full notice of the existence of said lien when they accepted the said deed. This defendant does not know of the existence of the other judgments in the said bill of complaint mentioned.

This deponent does not know that the said complainants and the said Bryan ever paid to said Moses Austin the said sum of two thousand five hundred, dollars or any part thereof, but on the contrary thereof has heard from said Moses Austin and others and believes it to be true that the said complainants and the said Bryan did not nor did either of them ever pay to the said Austin or any person for him the said sum of money or any part thereof.

This defendant does not know whether the contract in the said bill of complaint mentioned in relation to the transfer of one hundred and three shares of bank stock from said Austin to the said complainants and said Bryan was ever made or not, but expressly denies that any such transfer ever was made as is required to make it available according to the act incorporating the president, directors, and company of the Bank of St. Louis.

163 This defendant further states that before and after making of the conveyances as aforesaid the said Rufus Pettibone was the attorney and counsellor at law of the president, directors, and company of the Bank of St. Louis, and as such received fees from them and enjoyed their confidence, and was in their employ and pay during the whole of the transactions aforesaid, and his opinions & advice were by them much relied on and confided in; that the said Rufus availing himself of the unlimited confidence reposed in him by the said president, directors, & company as aforesaid, and pretending to them that he the said Rufus & the said Levi

had paid to the said Moses the sum of twelve hundred and fifty dollars, being their part of the contract aforesaid, and that the said Shaw tract would not reimburse them that sum; and the said Rufus moreover, while he was the confidential attorney and adviser of the said president, directors, and company, pretending and insisting that by virtue of the contracts aforesaid so as aforesaid made, the said complainants and said Bryan would obtain an injunction and stay proceedings on the whole of the said judgment obtained by the said president, directors, and company against said Austin, and the said Rufus further declared to the said president, directors, & company that unless they would secure to
164 the said complainants the amount advanced by them as aforesaid
an injunction would be applied for and obtained; and the said president, directors, and company, confiding in and believing the said statements and opinions of the said Rufus, and to avoid the embarrassment and delay and danger of total loss threatened by the said Rufus, while they confided in him as their attorney and confidential counsellor they by their president & directors passed the said resolution in the said bill of complaint set forth and for no other cause, reason, or consideration whatever.

And this defendant further says that he is informed and believes that the said Levi, the other complainant, had full notice of all the transactions aforesaid at the time they respectively occurred.

And this complainant further says that the said complainants have been fully indemnified and reimbursed for all and every sum and sums of money advanced by them or either of them to said Austin, and for all money due and owing by said Austin to said complainants, or either of them, and all expenses incurred by them in and about the premises by and out of their interest in the said tract of land called the Shaw tract, conveyed to them by said Bates & wife as aforesaid; so this defendant charges that the said resolution was obtained by fraud and misrepresentation.

165 This defendant admits that the complainants never did obtain
any writ of injunction or supersedeas, nor does he believe they ever could have obtained any against the said judgment.

This defendant also admits the said several sales of the said Mine à Breton tract and conveyances thereof as stated in the bill of complaint.

This defendant also admits that no part of the said Mine à Burton *had* of land ever was conveyed to the said complainants, but this defendant alleges that he has always been ready and willing and has offered to the attorneys of the complainants, and still is ready and willing to pay to the complainants such sum of money as shall be their due proportion of the amount arising out of said sale to this defendant, according to the said resolution, as soon as they the said complainants shall satisfy him that so much is justly due to them, or to pay them such part as shall appear on a fair settlement to be unsatisfied.

This defendant also admits that, relying on the representations of the complainants, he did once admit their claim to be just; but having since been informed and believing those representations to be false therefore insists that he is not bound by that admission.

And this defendant as to the first, second, third, and fourth interrogatories answers in the affirmative and denies that the said tract of land was conveyed to him on the express terms that he should satisfy the
166 said claims of the said complainants, but he admits that he had

knowledge of those claims and that the complainants requested him to satisfy the same before the filing of their bill, and that he refused, but does not remember whether that request was made before or after the execution of the conveyance by him to said Stephenson, Smith, & McKinney in said bill stated, but thinks it must have been after.

He admits the execution of the said conveyance, and herewith exhibits a copy, marked "A No. 1," which will more fully show at what time, on what consideration, & the extent of this defendant's interest in said land.

He admits that he has taken the rents, issues, and profits of said land; does not remember how long, but thinks they amount to about three thousand one hundred dollars.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without there is any other matter, cause, or thing in the said bill of complaint contained material or necessary for this defendant to answer unto and not herein & hereby well and sufficiently answered, avoided, traversed, or denied, is true to the knowledge or belief of this defendant. All of which matters and things this defendant is ready and willing to aver, maintain, and prove
as this honorable court shall direct, and hereby prays to be hence
167 dismissed with his reasonable costs & charges in this behalf most
wrongfully sustained.

GEYER,
Sol. for Def't.

And following said answer is the following affidavit, to wit:

STATE OF MISSOURI,
County of St. Louis, Township of St. Louis, sct:

This day personall' appears Risdon H. Price, and makes oath that the fact' stated in the foregoing answer, as far as they are stated of his own knowledge, are true, and those stated as *stated as* of the knowledge of others he believes to be true.

RISDON H. PRICE.

Sworn & subscribed to before me, a justice of the peace within and for the county and township aforesaid, this 6th day of August, 1822.

MOSES SCOTT,
Justice of Peace in and for County and Township aforesaid.

And on the same day and year last aforesaid the following replication to said answer was filed, to wit:

Reply.

LOUIS PETTIBONE & RUFUS PETTIBONE
vs.
RISDON H. PRICE, BENJAMIN STEPHENSON, Richard T. McKinney, Theophilus W. Smith, the Bank of Edwardsville.
} In chancery.

In the superior court of chancery.

The replication of the said Levi & Rufus, complainants, to the separate answer of Risdon H. Price, one of the above defendants.

This repliant, saving & reserving to himself all and all manner of advantage of exception to the manifest insufficiencies of the said answer, 168 for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without that that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denies, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

FARRIS & SPALDING,
Sol'rs & of Counsel for Compl'ts.

And afterwards, to wit, on the 13th day of June, 1823, the following further proceedings were had:

LEVI & RUFUS PETTIBONE
vs.
RISDON H. PRICE & OTHERS.

The complainants in this case and Risdon H. Price, one of the defendants, appear this day by their counsel and pray a rule that the matters and things in controversy in this suit between the said complainants and the said Price be referred to David Barton, esq'r, whose decree in the premises they agree shall be entered as the decree of this court, and it is ruled accordingly.

It is *is* further ordered that the said referee report in the premises during the present term of this court.

And afterwards, to wit, on the 20th of June, in the year last aforesaid, the following further proceedings were had in said cause, to wit:

LEVI PETTIBONE AND RUFUS PETTIBONE
vs.
169 RISDON H. PRICE, BENJ. STEPHENSON, & others.

Now at this day comes Mr. Spalding, counsel for said complainants, and gives the court here to understand and be informed that since the last continuance of this cause Benjamin Stephenson, one of said defendants, died, which allegation is not denied.

And on the said day and year the following further proceedings were had, to wit

SAME
against
SAME.

And now at this day comes David Barton, esquire, to whom, by consent of parties, were referred the matters in difference in this cause between the said complainants and Risdon H. Price, one of the defendants, and makes the following report:

The directors of the Bank of St. Louis, including the respondent, as their president, stipulated with the complainants by a resolution of the board to allow them a lien for one thousand dollars on the Mine au Briton estate of Moses Austin, dec'd, against whom the bank had a judgment for

about fourteen thousand dollars, and the complainant had a demand for money advanced to him under the circumstances stated in the bill, and the bank directors agreed by that resolution that if the estate were purchased in for them the complainant should be entitled to an undivided share of the estate in the proportion which their thousand dollars bear to the debt of the bank. The estate was sold under the judgment
170 and purchased for the bank, which sold to Price, the respondent, under a knowledge on part of the directors and Price of the premises. Price afterwards sold the estate to the Bank of Edwardsville with a knowledge, as the complainants allege, of their claim, but this part of the case not being submitted to me no inquiry into this last allegation has been made.

Price alleges fraud on part of complainants in obtaining their liens, but no evidence of that is given.

Under these circumstances it appears that if the Bank of Edwardsville shall be found in the event of this suit to have purchased with notice of the complainants' lien that the complainants are entitled to a decree for their proportion of the land, according to the resolution referred to; but if the Bank of Edwardsville have purchased under circumstances that discharge the estate in their hands of the complainants' lien that then the complainants are entitled to a decree against the respondent Price for the sum of one thousand dollars, with legal interest thereon from the date of the resolution creating their lien, on the ground that it was satisfactorily proved that the estate was really worth fifteen thousand dollars, and the fifteenth part of the estate secured to the complainants would have been worth their money and interest to them, of which part they will have been deprived by the sales of Price to the Bank of Edwardsville, should
171 that sale be found to have vested the estate in them discharged of the defendant's lien.

This opinion as to Price's sole liability is formed upon the supposition that Price acted in his own right in the sale of the Edwardsville Bank, and not merely as an agent of the Bank of St. Louis.

Wherefore, upon application of the complainants' counsel, it is ordered, adjudged, and decreed that the said report be confirmed, and that the said Risdon H. Price pay to the said complainants the sum of one thousand dollars, with interest from the eleventh day of March, in the year of our Lord one thousand eight hundred and twenty, the whole now amounting to the sum of one thousand one hundred and ninety-six dollars and sixty-six cents, and that said complainants have execution for that latter sum in due form of law against the goods & lands and body of said defendant.

And it is further decreed that the said Mine à Breton tract as it was when conveyed to said Price by said bank be subject to said execution, and that this decree be a lien on said tract, or such interest in the same as now belongs to said Price, to one-fifteenth part thereof from said eleventh day of March, in the year one thousand eight hundred and twenty.

And on the same day and year the following further proceedings were had in said cause, to wit:

SAME }
vs. }
SAME. }

172 This cause come on this day to be heard between the said com-

plainants and Richard T. McKinney, Theophilus W. Smith, & the president, directors, and company of the Bank of Edwardsville, part of the defendants in this cause.

On motion of Mr. Spalding, being of counsel for said complainants, and it appearing to the satisfaction of the court that the order of publication heretofore made against the said non-resident defendants has been duly published according to the order of the court, whereupon it was prayed that the allegations contained in said bill be taken for confessed against the said defendants; and it is ordered accordingly, conditionally, that if the said defendants do not appear within five years from the date of this decree and file their bill of answer praying to have this conditional decree reversed and file an answer to the original bill in this case this decree shall from the end of five years stand absolute.

And afterwards, to wit, on the 13th day of July, 1824, the following further proceedings were had in said cause, to wit:

RUFUS PETTIBONE
vs.
R. H. PRICE AND OTHERS.

On motion the court doth order and adjudge that the decree entered in this at the June term, 1823, upon the award of the arbitrator to whom the matters in dispute was referred be set aside, it not having been the intention of the court to grant such decree.

173 And it is further ordered that the award aforesaid be set aside for uncertainty.

And afterwards, to wit, 29th December, 1825, the following further proceedings were had, to wit:

LEVI & RUFUS PETTIBONE
vs.
RISDON H. PRICE.

It is suggested to the court here by the solicitor for said complainant that since the commencement of this suit Rufus Pettibone, one of said complainants, died, which allegation is not denied, and thereupon Levi Pettibone enters his appearance as administrator of the estate of said Rufus, & the cause is continued.

And the said cause was continued until the 15th day of January, 1828, when the following further proceedings were had, to wit:

LEVI PETTIBONE & RUFUS PETTIBONE, ADM'R,
vs.
RISDON H. PRICE, THE BANK OF EDWARDSVILLE, & others.

This cause came on to be heard before the court in presence of counsel on both sides as between said complainant and Risdon H. Price, one of he defendants, and the court taking into consideration the several mat-

ters alleged in the bill of complaint, and likewise the statements and admissions in the answer, as also the replication to said Price's answer, together with the legal proof exhibited on said hearing that said several deeds mentioned in said bill of complaint were respectively made and executed by the persons therein to, have made them and with the further
testimony that said Rufus Pettibone had been the attorney of said
174 Moses Austin, and had attended to business of said Moses, in the
county of Jefferson, to the amount of between one and two hundred dollars, at or about the time when those deeds were signed; whereupon the court is of opinion that the said Price is in justice bound to pay to said complainant the sum of one thousand dollars, with interest thereon from the eleventh day of March, in the year of our Lord one thousand eight hundred and twenty, the whole amounting to the sum of one thousand seven hundred dollars; and it appearing to the court likewise that the order of publication heretofore made as to the non-resident defendants in this case has been duly published according to law, and that the allegations contained in said bill were ordered to be taken as confessed by decree of this court of June term, eighteen hundred and twenty-three, as to said Richard T. McKinney, Theophilus W. Smith, and the president, directors, & company of the Bank of Edwardsville, non-resident defendants; and it further appearing to the court that the said McKinney, Smith, and the said bank had notice of said complainants, equitable upon said tract of land conveyed to said Pettibones by deed, a copy of which is in exhibit marked "A" in said bill before they said defendants, McKinney, Smith, or said bank, became interested in said tract: the court doth
therefore order, adjudge, and decree that the said complainant Levi
175 Pettibone, recover in his own right and as administrator as afore-
said, against said Price, said McKinney, & said Smith, and said Bank of Edwardsville, the sum of money aforesaid, and that said Price pay the same on or before the next term of this court, and costs, or that execution therefor be issued against him, and that this decree be a lien upon the tract of land described in Exhibit A in said bill, situate at and near the Mine à Breton, in the county of Washington, confirmed to said Moses Austin by the Government of the United States, upon a grant to said Austin by the Spanish Government, containing originally seven thousand one hundred and sixty arpents, excepting, however, such parcels as said Moses had conveyed before he made said deed to said Pettibones, which exceptions are fourteen hundred and thirty-two arpents to John Rice Jones, forty-five arpents to the county of Washington, two hundred and sixteen arpents to a Mr. Perry, two hundred and forty-three arpents to a Mr. Ruggles, to a Mr. McGready fifty-eight arpents, to John Brickey, sen., four arpents, to Mr. Ficklin three hundred and twenty-four arpents, to Mr. McCormick forty-five arpents, to Mr. Brock, one hundred and sixteen arpents, with which said exceptions this decree is to be a lien upon said tract until the payment of said sum of money and costs by some or one of said defendants.

And it is further ordered that execution may issue against all
176 of said defendants.

This decree, however, is, as to said McKinney, Theophilus W. Smith, & said Bank of Edwardsville, conditional, that if said defendants do not appear within five years from the date of the decree heretofore entered against them on June twentieth, eighteen hundred and twenty-three, and file their bill of review praying to have that decree and the present reviewed, and file an answer to the original bill in this case, this decree shall from the end of said five years stand absolute.

And afterwards, to wit, on the 22nd day of April, 1830, the following supplemental bill was filed, to wit:

Supplemental bill.

To the honorable the circuit court sitting in and for the county of St. Louis as a court of chancery:

Humbly complaining unto your honor, your orators, Levi Pettibone, in his own right and as administrator of Rufus Pettibone, Maria Eliza Pettibone, Margaret Louisa Pettibone, Claudius John Pettibone, Henry Levi Pettibone, & William Rufus Pettibone, only children & heirs of Rufus Pettibone, deceased, by their guardian, appointed pendente lite, represent that heretofore, and in the life-time of Rufus Pettibone, now deceased, to wit, on the day of , in the year one thousand eight hundred and twenty, the said Rufus Pettibone and Levi Pettibone filed their bill in this court, setting forth that on or about the fifteenth 177 of February, in the year eighteen hundred and twenty, the said Rufus and Levi & James Bryan bought and took a deed for a certain tract of land granted to Moses Austin by the Spanish Government, containing seven thousand one hundred and sixty arpents, being one league square, situate at & near the Mine à Breton, in the county of Washington, & now State of Missouri being the only concession from the Spanish Government to the said Moses Austin, excepting, however, such parcels of said tract as said Austin had previously sold & conveyed, which parcels so disposed of are particularly mentioned in said bill. And the said bill set forth that at the time of said purchase from Austin by them, said Rufus and Levi, the president and directors of the Bank of St. Louis had a judgment against the said Moses Austin for a little more than fourteen thousand dollars, which judgment was a lien upon the said Mine à Breton tract, against which judgment said Rufus & Levi took said tract at their own risk, without recours' to said Moses, and that said Rufus and Levi agreed with the president and directors of said bank that if they would secure to said Rufus and Levi a thousand dollars, they, the said Rufus & Levi, would not attempt to enjoin said judgment, or any part thereof; & the said president & directors did thereupon, on the eleventh day of March, in the year one thousand eight hundred and twenty, pass a reso- 178 lution purporting that if said tract of land were bought in by said bank on said judgment, that then said Rufus & Levi should be interested therein with said bank in proportion to their respective claims aforesaid, & have a lien in such proportion for their said claim of a thousand dollars.

And said bill further set forth that said tract was seized on execution on said judgment & execution thereon & sold, and bought in by said bank by their agent, & that said bank sold said tract afterwards to Risdon H. Price, & that neither said bank nor said Price, though he had full notice of said Levi & Rufus' claim, had paid them or either of them anything; which matters, together with other things, were more particularly set forth in said bill, which bill prayed that the land aforesaid might be subjected to the payment of the said claim of Levi & Rufus, with interest.

And your orators further say that afterwards process in said suit was served on Risdon H. Price as defendant, who appeared and filed his answer, there being several other defendants therein non-resident, on whom process was not served, and that afterwards said Rufus died, leaving as his sole and only heirs your orators above mentioned as his children, who are now infants.

And such proceedings were had in said suit that a decree was entered for
said Levi in his own right and as administrator of said Rufus, which
179 decree has been reversed & the case is now pending in the St. Louis
circuit court; and your orators allege that the said Risdon H. Price
has, by deed dated the twentieth of June, in the year eighteen hundred and twenty-eight, conveyed said tract of land unto William Milan, in fee, since the pendency of said suit, and that the said tract as set forth in said original bill is liable for the said claim of Rufus Pettibone, and is bound for the half of said claim, your orators admitting that the said Levi has been paid his full half & portion of said claim coming to him in his own individual right, and that only that portion of it belonging to said Rufus, deceased, is now unsatisfied.

Wherefore your orators pray that said Milan may be made defendant in this suit, and that such relief may be afforded them as is prayed in said original bill.

J. SPALDING, *Sol'r.*

And on the same day and year the following answer of William Milan was—

In the St. Louis circuit court, March term, 1830.

BETWEEN LEVI PETTIBONE & ELIZA PETTIBONE, Margaret Louisa Pettibone, Claudius John Pettibone, Henry Levi Pettibone, and William Rufus Pettibone, children and heirs of Rufus Pettibone, deceased, by their guardian the said Levi Pettibone,

vs.

RISDON H. PRICE, WILLIAM MILAN, & OTHERS.

The separate answer of William Milan to the original and supplemental bills filed in the above cause.

180 This respondent with the usual reservations answers and says that as far as he knows and believes the matters and things stated in the said bills, original and supplemental, are true, and he confesses and admits the same, and he consents that the said court shall decree according to the equity and justice of the case as set forth in said bills.

WM. MILAM, *Defendant.*

☞N. B. The following transcript of an opinion of the supreme court in the cause filed in the office of the clerk of the circuit court on the 27th

July, 1829, was omitted in its proper place in this record, viz, immediately preceeding the supplemental bill & Milam's answer, & is now here inserted, to wit:

State of Missouri,
Third Judicial District:

Be it remembered that heretofore, to wit, at a supreme court begun and held at the city of St. Louis, on the second Monday of April, in the year of our Lord one thousand eight hundred and twenty-nine, before the honorable Matthias McGirk, Robert Wash, and George Tompkins, judges thereof, the court gave judgment in the cause stated below in the words thereafter following:

Monday, *20th April*, 1829.

Levi Pettibone in his own right & as administrator of Rufus Pettibone,
vs.
Risdon H. Price, Richard McKinney, T. W. Smith, & others.
} In chancery.

Appeal from St. Louis circuit court.

And now at this day comes the said Levi, appellee as aforesaid, by his attorney, and asks leave to withdraw his joinder in error, which is
181 granted, and the same is accordingly withdrawn.

And thereupon the said Levi by his attorney aforesaid confesses that the decree aforesaid in form aforesaid rendered is erroneous, in that it makes said Risdon H. Price, Theophilus W. Smith, Richard T. McKinney, and the Bank of Edwardsville liable for the whole claim of said Levi, and in that it awards execution against them for the same.

Wherefore it is considered by the court that the decree aforesaid in form aforesaid rendered by said circuit court be reversed, and for nought held and esteemed, and that the said cause be remanded to the said circuit court for further proceedings according to law.

And it is further considered by the court that the said appellants recover against the said appellee their costs and charges by them about their appeal in this behalf expended, and that they have thereof execution.

State of Missouri,
Third Judicial District:

I, Joseph C. Brown, clerk of the supreme court for the third judicial district, do certify the foregoing to be a true copy of the judgment of the supreme court in the said cause, as the same remains of record in my office.

Witness my hand and seal of office, at office, this 25th day of July, in the year of our Lord eighteen hundred and twenty-nine.

[seal.] JOS. C. BROWN, *Clerk.*

And afterwards, to wit, on the twenty-second day of April, 1830,
182 the following final proceedings were had in said cause, to wit:

LEVI PETTIBONE, IN HIS OWN RIGHT AND AS ADministrator of Rufus Pettibone, deceased, Eliza Pettibone, Margaret Louisa Pettibone, Claudius John Pettibone, Henry Levi Pettibone, & William Rufus Pettibone, children and heirs of Rufus Pettibone, deceased, by the said Levi Pettibone, their guardian,

vs.

RISDON H. PRICE, RICHARD T. MCKENNEY, Theophilus W. Smith, The President, Directors, and Company of the Bank of Edwardsville, and William Milan.

And now at this day this cause coming on to be heard by consent of parties, in the presence of counsel on both sides, on the pleadings and proofs in the cause, the bill being taken as confessed against Richard T. McKenney, Theophilus W. Smith, & The President, Directors, and Company of the Bank of Edwardsville, and the defendant William Milam, by his answer, admitting the truth of the statements made in the original and supplemental bills, and the court taking into consideration the statements in the bills and the proofs in the cause, is of opinion that the said Levi Pettibone, in his own right, and as administrator of the said Rufus Pettibone, deceased, ought to receive of the said defendants the sum of sixteen hundred dollars, the amount stated in the bill, with interest, which by the statements of the bill and the proofs in the cause is properly and
justly chargeable upon the said tract of land conveyed by the
183 said Moses Austin to the said Levi Pettibone and Rufus Pettibone
and James Bryan, of which said claim upon the said tract of land the said defendants McKinney and Smith and The President, Directors, and Company of the Bank of Edwardsville had notice before they became interested in the said tract of land so conveyed as aforesaid:

Therefore it is ordered, adjudged, and decreed that the said Levi Pettibone, complainant, in his own right and as administrator of the said Rufus Pettibone, deceased, recover the said sum of sixteen hundred dollars, to be satisfied and paid out of the said tract of land conveyed by the said Moses Austin to the said Levi Pettibone & Rufus Pettibone and James Bryan, which is described in said conveyance as the whole of that certain tract of land heretofore granted to the said Moses Austin by the Spanish Government, and confirmed to him by the Government of the United States, containing seven thousand one hundred and sixty arpens, and being a league square, situated at and near the Mine à Burton, in the county of Washington and Territory (now State) of Missouri, being the only concession from the Spanish Government to the said Moses Austin, from which was excepted such parcels thereof as the said Moses had
theretofore sold and conveyed, to wit: to John Rice Jones, four-
184 teen hundred and thirty-two arpens; to the county of Washington,
forty-five arpens; to a Mr. Perry, two hundred and sixteen arpens;
to a Mr. Ruggles, two hundred and forty-three a'pens; to a Mr. McGready,

fifty-eight arpens; to John Brickey, sen'r, four arpens; to Mr. Ficklin, three hundred and twenty-four arpens; to Mr. McCormick, forty-five arpens; to Mr. Brock, one hundred and sixteen arpens, which said several pieces of land above named and excepted are severally described in the deeds and contracts to the said purchasers for the same.

And the said Levi Pettibone, as complainant in his own right and as administrator of Rufus Pettibone, admits and acknowledges that he has received here in court from William Milam, one of the above-named defendants, the full amount of sixteen hundred dollars above decreed in favor of complainants.

Wherefore it is ordered, adjudged, and decreed that all the estate, right, and title, and interest acquired by the said Levi & Rufus Pettibone to the tract of land above described under and by virtue of the said deed from the said Moses Austin and wife, and under and by virtue of a resolution of the president and directors of the Bank of St. Louis in the bill of complaint mentioned, and in any other manner whatever, shall pass from the above-named Levi Pettibone and from the above-named children and heirs of Rufus Pettibone, to wit, Eliza Pettibone, Margaret Louisa Pettibone, Claudius John Pettibone, Henry Levi Pettibone, & William Rufus Pettibone, and be vested in the said defendant William Milam and his heirs in as full and ample manner as the said Levi & Rufus held the same. 185

And the court doth further order, adjudge, and decree that the said complainants recover from the said defendants their costs and charges by them about their suit in this behalf laid out and expended, and that they have thereof execution.

STATE OF MISSOURI,
County of St. Louis, ss:

I, John Ruland, clerk of the circuit court in and for said county, certify the foregoing to be a full & true transcript of the record and proceedings in the case of Rufus & Levi Pettibone vs. Risdon H. Price et al., as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in the city, of St. Louis, this 7th day of July, 1837.

[SEAL.] JOHN RULAND, *Clerk.*

186 *Certified copy of deed of Price & wife to Milan.*

Certified copy of deed of Risdon H. Price & wife to William Milam, as follows:

This deed, made and concluded this twentieth day of June, in the year of our Lord eighteen hundred and twenty-eight, between Risdon H. Price, of the county of Washington, of the one part, and William Milan, of the same county, of the other part, witnesseth:

That the said Resden H. Price, for and in consideration of the sum of nineteen hundred & seventy-nine doll's and forty-eight c'ts to him in hand paid by the said William Milan at and before the essealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents, doth grant, bargain, and sell, unto the said William Milan, his heirs, and assigns, forever, all the right, title,

claim, and interest of him, the said Risden H. Price, his heirs, and assigns, of, in, and to a certain tract or parcel of land, being one league square, situated, lying, and being in the county of Washington aforesaid, adjoining the villiage of Mine à Breton, which said tract of land contains seven thousand one hundred and fifty-three arpens thirty-two and two-third poles, and is commonly called and known by the name of Moses Austin's Mine à Breton survey, which said tract of land was originally granted to Moses Austin on the fifth day of July, in the year eighteen hundred and two, by John Ventura Morales, by a complete grant, recorded in the office of the recorder of land titles, book A, pa. 100, and conveyed to Charles R. Ross by the sheriff of Washington County, by deed dated the
187 twenty-first day of March, in the year eighteen hundred & twenty,
which deed is recorded in the recorder's office, Washington County, book B, pages 137, 138, 139, 203, & following, and afterwards conveyed to the said Risdon H. Price by the said Charles R. Ross, by deed dated the twenty-first day of December, in the year aforesaid, and recorded in the recorder's office last aforesaid, book B, pa. 20 & 21, the said Risdon H. Price excepting, however, all and singular the several tracts & parcels of land which were excepted by the said Charles R. Ross in the said last-mentioned deed: To have and to hold the said tract of land (with the exception aforesaid), with the appurtenances, unto the said William Milan, his heirs and assigns, forever.

In testimony whereof the said Risdon H. Price has hereunto set his hand & affixed his seal the day and year last aforesaid.

RISDON H. PRICE. [SEAL.]
MARY G. PRICE. [SEAL.]

Witnesseth:
ALEX. SOMERVILLE.
JAMES M. WHITE.

STATE OF MISSOURI,
County of Washington, ss:

Be it remembered that on this twenty-first day of June, in the year of our Lord one thousand eight hundred and twenty-eight, before me, a justice of the peace within and for the county aforesaid, personally came Risdon H. Price and Mary G. Price, his wife, both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledge the same to be their act and deed for the purposes therein mentioned; she, the said Mary,
188 acknowledging to know the contents thereof, and examined separate
and apart from her husband whether she executed the said deed and relinquishes her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed and relinquishes her dower in the said land and tenements therein mentioned voluntarily, freely, and without compulsion or undue influence of her said husband.

Taken and certified the day and year aforesaid.

JOHN BRECKEY,
Justice of the Peace.

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, recorder in and for the county aforesaid, do hereby certify that the foregoing deed from Risdon H. Price & wife to William Milam, is truly recorded in my office, book B, 392. Given under my hand and seal of office this 24th day of September, 1828.

[SEAL.] ISRAEL McGREADY, *Recorder.*

189 *Certified copy of proceedings of estate of Pettibone, Rufus, dec'd, & sale of his interest to Levi Pettibone.*

Certified copy of proceedings of estate Rufus Pettibone, dec'd, & sale of his interest to Levi Pettibone, as follows:

STATE OF MISSOURI,
County of St. Charles, ss:

Be it remembered that heretofore, to wit, on the twenty-seventh day of May, in the year of our Lord eighteen hundred and twenty-nine, at the May term of the county court for St. Charles County, Levi Pettibone, administrator of the estate of Rufus Pettibone, deceased, filed in said court a petition praying for a sale of certain real estate, which is in the words and figures following, to wit:

The honorable county court of the county of St. Charles, in the State of Missouri:

Your petitioner, Levi Pettibone, administrator of all and singular the goods, &c., which were of Rufus Pettibone, late of said county, deceased, respectfully shows that the amount of debts due said estate nominally as inventoried is the sum of fifteen hundred & sixty-three dollars, as appears by said inventory, most of which, if not all, are considered as entirely desperate; nothing has as yet been collected on them besides some claims left blank, considered of the same character, except the one against Risdon H. Price; that said administrator has duly accounted in his settlement
for all the moneys that have come to his hands as well as of all the
190 personal chattels embraced in inventory, saving the negro girl there
named who has been set free by judgment of court.

That debts have been proven against said estate as follows, to wit: in favor of Levi Pettibone, May term, 1827, $754.45; Geo. W. Atchison, 22.37; Matthias McGirk, 29.50; William Riley, 14.00; adm'rs of John Jacoby, dec'd, 29.80; John Stoddard, 41.25—$891.37.

The following lands belonging to estate of said deceased are situate in this State, viz: an undivided half of two lots in the town of Louisiana, in the county of Pike, numbered on the plan of said town one hundred and eleven & one hundred and fourteen (111) (114), the right of Samuel K. Caldwell to said lots having been purchased at sheriff's sale at the July term of circuit court, in the year eighteen hundred and twenty-one; and a claim upon a tract of land in the county of Washington, now in the possession of Risdon H. Price, and for which a suit is now pending in the court of chancery for the county of St. Louis to secure the payment of the debt above named against said Price.

Wherefore, for want of sufficient personal estate or effects charged with the payment of said debts, your petitioner prays that the right and interest of said deceased at the time of his death in and to said lands, or so much thereof as will be sufficient to pay said debts, may be sold 191 by order of your honorable court pursuant to the provisions of the statute in such case made and provided.

LEVI PETTIBONE,
Adm'r Rufus Pettibone, Dec'd.

I, Levi Pettibone, above named, do on my oath say that the facts set forth & contained in the above schedule are true according to the best of my knowledge & belief.

LEVI PETTIBONE.

Subscribed & sworn to in open court before me this 27th May, 1829.
WM. CHRISTY, JR., *C. C'ty C't.*

And on the same day last aforesaid, to wit, May 27th, 1829, and at the May term of the county court aforesaid, the following proceedings were had, to wit:

Levi Pettibone, administrator of all and singular the goods and chattels, rights and credits, of Rufus Pettibone, dec'd, comes and files his petition praying an order or decree of this court to sell so much of the real estate of said deceased as will be sufficient to complete the payment of the debts of said deceased, containing a statement of the debts due to and from said deceased, with a list of lands in this State belonging to said deceased, and an account of personal assets in his hands charged with the payment of said debts, all of which was verified by the oath of said administrator, whereby it appears to the court that there is not sufficient personal estate or assets in his hands to complete the payment of the said debts.

Whereupon it is ordered by the court that all persons interested in the estate of said deceased be notified that application has been made to 192 this court for the sale of the real estate of said deceased lying in this State for the payment of said debts, and that unless the contrary be shown on or before the first day of the next term a decree will be made for the sale of the whole or so much of said real estate as shall be sufficient to complete the payment of said debts.

And afterwards, at the August term of the county court aforesaid, and on the fourth day of said term, to wit, August 27th, 1829, the following proceedings were had, to wit:

Levi Pettibone, administrator of Rufus Pettibone, appears here and makes satisfactory proof to the court that he had, pursuant to the order of this court of last term, notified all persons interested in the estate of said deceased that an application has been made to said court for the sale of the real estate of said deceased, for the payments of the debts against said deceased, viz: by a publication in a newspaper printed and published in the city of St. Louis, in this State, called the Missouri Republican, for six weeks successively, the last insertion being at least two weeks before the present term.

And it appearing to the court that the said administrator has not in his hands sufficient personal estate or effects charged with the payment of said

debts to satisfy the same, and no good and sufficient cause being shown
why the said real estate should not be sold for the payment of
193 said debts, and the court being of opinion that it would be for the
general advantage of the estate and of all persons interested therein that such sale should be made, it is therefore ordered, adjudged, and decreed that the said Levi Pettibone, administrator as aforesaid, do proceed to sell to the highest bidder for cash in hand, on the first Thursday after the second Monday of the month of October next, at the court-house door in the town of Bowling Green, in the county of Pike, while the circuit court of said county shall be in session on that day, all the right, title, and interest which the said deceased at the time of his death had and to two certain lots or parcels of ground in the town of Louisiana, in said county of Pike, known on the recorded plat of said town by the numbers one hundred and eleven (111) and one hundred and fourteen (114); and that said administrator do also proceed to sell to the highest bidder for cash in hand on the second Monday of October next, at the court-house door, in the town of Potosi, in the county of Washington, while the circuit court of said county shall be in session on that day, all the right, title, and interest and claim which the said deceased at the time of his death had
in and to a certain tract or parcel of land situate in the said county
194 of Washington, and now or late in the possession of Risdon H.
Price, being all the claim or interest of said deceased in and to a league square of land granted by the Spanish Government to Moses Austin, and is situate at or near the Mine à Breton, so called, and is all the right, &c., acquired by said deceased by deed from Moses Austin and wife to said deceased, James Bryan, and Levi Pettibone, dated February 15th, 1820, and recorded in the said county.

And afterwards, at the November term of said court for the year 1829, on the third day of said term, to wit, November 25th, 1829, Levi Pettibone, administrator as aforesaid, filed in court his report of the sale of the lands mentioned in the petition and order of court aforesaid, which is in the words and figures following, to wit:

The honorable the county court of the county of St. Charles, in the State of Missouri:

The undersigned, administrator of Rufus Pettibone, late of said county, deceased, would respectfully report, that pursuant to an order of said court made at the August term thereof, in the year of our Lord one thousand eight hundred and twenty-nine, I did advertise the lands in said order mentioned for sale at the times and places therein mentioned, viz, by publication in a newspaper printed and published in the city
of St. Louis, called the Missouri Republican, for four weeks suc-
195 cessively before the day of sale, and did cause not less than ten
printed advertisements to be put up in the most public places in different parts of both and each of the counties of Pike and Washington at least twenty days before the day of sale, a copy of which said advertisements is hereunto annexed and makes part of this report; that on the thirteenth day of October, in said year eighteen hundred and twenty-nine, I did cause the right, &c., of said deceased in and to the lots of land

in the town of Louisiana, in the said county of Pike, numbered on the recorded plat of said town one hundred and eleven (111) and one hundred and fourteen (114), mentioned in said advertisements to be appraised by three respectable, disinterested householders in the neighborhood of the said lots, who were first duly sworn by a justice of the peace of said county in manner and form as directed by law, an affidavit whereof and certificate of said appraisement by *said appraisement by* said appraisers are hereunto annexed and severally make part of this report.

And that on the first Thursday after the second Monday of the month of October, being the fifteenth day of the said month in the year aforesaid, I did proceed to offer for sale to the highest bidder for cash in hand,
at the court-house door in the town of Bowling Green, in said
196 county of Pike, and while the circuit court for said county was in
session on that day, all the right, title, &c., which said deceased at the time of his death had in and to said lots, when and where the undersigned administrator being the highest and last bidder for the same, at the sum and price of seven dollars and fifty cents, being three-fourths of the appraised value of said lots, then and there became the purchaser thereof.

That on the ninth day of November, in the year aforesaid, I did cause all the right, title, &c., which the said deceased at the time of his death had in and to a certain tract or parcel of land situate in the county of Washington aforesaid, mentioned in said advertisements and known as the league square of land granted by the Spanish Government to Moses Austin, and situated at or near Mine à Breton, so called, to be appraised by three respectable disinterested householders in the neighborhood of said tract of land, who were first duly sworn by a justice of the peace of said county in manner and form as directed by law, an affidavit whereof and certificate of said appraisement by said appraisers are hereunto annexed and severally make part of this report.

And that on the second Monday of the month of November, being the
ninth day of said month, in the year aforesaid, I did proceed to offer
197 for sale to the highest bidder for cash in hand, at the court-house
door in the town of Potosi, in the said county of Washington, all the right, title, &c., of said deceased in and to said tract of land pursuant to the notice contained in said advertisements, it being the day appointed by law for holding the circuit court for said county, at which time the judge of said court not appearing to open said court, and no person appearing to bid for the said tract of land, the sale thereof was then and there publicly adjourned until the next day, to which time the said court stood adjourned by law, and the said judge not appearing to open court on the said last-named day, and no person appearing to bid for the said tract of land on the same being again offered for sale, the sale thereof was then and there again publicly adjourned until the next day, to which time the said court stood adjourned by law.

And on the said last-named day, viz, on Wednesday, the eleventh day of November, in the year aforesaid, the judge of said court having appeared and opened said court, I did then and there at the said court-house door, and while the said court was in session, on that day again publicly offer for sale to the highest bidder for cash in hand, all the right, title, &c., of said deceased in and to said tract of land, when and where the undersigned administrator being the highest and last bidder for the

198 same for the sum and price of six hundred and six dollars, being more than three-fourths of the appraised value of said tract of land, then and there became the purchaser thereof.

All which is respectfully submitted.

LEVI PETTIBONE,
Adm'r Rufus Pettibone, Dec'd.

Attached to said report is the following notice of sale:

Public sale notice.

Pursuant to an order of the county court of the county of St. Charles, made and entered at the August term of said court, in the year eighteen hundred and twenty-nine, I will proceed to sell to the highest bidder for cash in hand, on the first Thursday after the second Monday of October next, at the court-house door in the town of Bowling Green, in the county of Pike, while the circuit court for said county shall be in session on that day, all the right, title, and interest which Rufus Pettibone, deceased, at the time of his death had in and to two certain lots or parcels of ground in the town of Louisiana, in said county of Pike, known on the record plat of said town by the numbers one hundred and eleven (111) and one hundred and fourteen (114).

I will also proceed to sell to the highest bidder for cash in hand, on the second Monday of November next, at the court-house door, in the town of Potosi, in the county of Washington, while the circuit court for 199 said county shall be in session on that day, all the right, title, and interest, and claim, which the said deceased at the time of his death had in and to a certain tract or parcel of land situate in the said county of Washington, and now, or late, in the possession of Risdon H. Price; being all the claim and interest of said deceased in and to a league square of land granted by the Spanish Government to Moses Austin, and is situated at or near the Mine à Breton, so called, and is all the right, &c., acquired by said deceased by deed from Moses Austin and wife to said deceased, James Bryan, and Levi Pettibone, dated February 15th, 1820, and recorded in said county of Washington.

LEVI PETTIBONE,
Adm'r of Rufus Pettibone, Dec'd.

SEP. 1ST, 1829.

Endorsed on said notice is the following certificate, to wit:

STATE OF MISSOURI,
County of Washington, ss:

I certify that I did affix & set up in the most public places in different parts of said county, at least ten advertisements, of which the within is a copy, and at least twenty days before the second Monday of November instant.

A. MILLER, *Sheriff.*

NOVEMBER 11TH, 1829.

Attached to the report of the administrator as aforesaid is the following qualification of appraisers and their appraisement, to wit:

STATE OF MISSOURI,
County of Pike, ss:

We, the undersigned, do solemnly swear that we will, justly and
200 truly, according to the best of our skill and abilities, view, appraise, and value such estate as shall be shown to us by Levi Pettibone, administrator of estate of Rufus Pettibone, dec'd, as the estate and property of said deceased, at the time of his death.

(Signed) WM. R. TURPIN.
JOEL CAMPBELL.
WILLIAM HUSTON.

Subscribed & sworn to before the undersigned, a justice of the peace for said county of Pike, this 13th October, 1829.

JOHN PRICE, *Jus. Peace.*

We, the undersigned, do hereby certify that we did on the thirteenth day of October, 1829, view, appraise, and value an undivided half of two lots in the town of Louisiana, numbered on the recorded plat of said town one hundred and eleven (111), and one hundred and fourteen, which were shown to us by Levi Pettibone, as belonging to the estate of Rufus Pettibone, deceased, and have appraised the same *to* ten dollars.

Witness our hands the same day last aforesaid.

WM. R. TURPIN.
JOEL CAMPBELL.
WILLIAM HUSTON.

Attached to the report aforesaid is the qualification of appraisers and their appraisement in the words and figures following, to wit:

STATE OF MISSOURI,
County of Washington, ss:

We, the undersigned, do solemnly swear that we will justly and truly, according to the best of our skill and abilities, view, appraise, and value such estate as shall be shown to us as the estate and property of
201 Rufus Pettibone, deceased, at the time of his death, viz: The right and interest which the said deceased had therein.

URIAH J. DEVORE.
WM. BURT.
DAN'L DUNKLIN.

Subscribed & sworn to before the undersigned, a justice of the peace within and for said county of Washington, this ninth day of November, A. D. 1829.

HENRY SHURLDS,
Justice of the Peace.

We, the undersigned, do certify that we did on this ninth day of November, A. D. 1829, view, appraise, and value that tract or parcel of land situate in the county of Washington, known as the league square of land granted by the Spanish Government to Moses Austin, which was shown to us by Levi Pettibone, administrator of Rufus Pettibone, dec'd, and have appraised the right and interest of said Rufus Pettibone, dec'd, therein, at the sum of eight hundred and seven dollars.

Witness our hands the same day last aforesaid.

ANN BURT.
URIAH J. DEVORE.
DAN'L DUNKLIN.

Endorsed on said report is the affidavit of the administrator as aforesaid, which is in the words and figures following, to wit:

STATE OF MISSOURI,
County of St. Charles, ss:

I do solemnly swear that the foregoing report is a just and true report of my proceedings, by virtue of the order or decree of the county court of said county, in said report referred to, and that I did not directly or indirectly become the purchaser of the lands and tenements in said
202 report mentioned, or any part thereof, or any interest therein, and that I am not in anywise interested in any of the said property sold by me except as stated in said report.

LEVI PETTIBONE.

Sworn to & subscribed before the undersigned, clerk of the county court, this 25th day of November, 1829.

WM. CHRISTY, JR.

And on the day last mentioned, Nov. 25th, 1829, it being the third day of the Nov. term of the county court of St. Charles County, the following proceedings were had, to wit:

And now at this day comes Levi Pettibone, administrator of the estate of Rufus Pettibone, and produces here in open court his report of his proceedings and sale of the real estate of said deceased, by virtue of & the order and decree of this court at the last term, which said report is received, approved, and affirmed by the court, and ordered to be filed.

And it also appearing to the court that said Levi became the purchaser of said real estate at three-fourths of its appraised value, and that he had made full payment thereof to said administrator, the court therefore execute, acknowledge, and deliver to him deeds thereof.

STATE OF MISSOURI,
County of St. Charles, ss:

I, Ludwell E. Powell, clerk of the county court for St. Charles County, certify the above and foregoing to be a full and true transcript of the record and proceedings of said court relative to the sale of certain real estate mentioned in the petition of Levi Pettibone, adm'r of the estate of
203 Rufus Pettibone, dec'd, as the same remains of record.

In testimony whereof I have hereunto set my hand and the seal of said court at office in the town of St. Charles, this 27th day of September, A. D. 1836.

[SEAL.] LUDWELL E. POWELL,
C. C'ty C't.

Deed of the justices of the county court of St. Charles County to Levi Pettibone.

Know all men by these presents that, whereas at the term of the county court for the county of St. Charles and State of Missouri, begun and held within and for said county, on the fourth Monday of August, in the year of our Lord one thousand eight hundred and twenty-nine, on the application and petition of Levi Pettibone, administrator of the estate of Rufus Pettibone, late of said county, deceased, which had before that time been duly made to said court for the sale of all or so much of the real estate of said deceased as should be sufficient to satisfy and pay the debts against said estate, it was ordered by said court that the said Levi Pettibone, administrator as aforesaid, do proceed to sell to the highest bidder for cash in hand, on the second Monday of the month of November, then next, at the court-house door, in the town of Potosi, in the county of Washington,
while the circuit court for said county shall be in session on that
204 day, all the right, title, interest, and claim which the said deceased
at the time of his death, had in and to that certain tract or parcel of land situate in said county of Washington, and now or late in the possession of Risdon H. Price, being all the claim and interest of said deceased in and to a league square of land, granted by the Spanish Government to Moses Austin, and situated at or near the Mine, à Breton, so called, and is all the right, &c., acquired by said deceased by deed from Moses Austin and wife to said deceased, James Bryan, and Levi Pettibone, dated February 15th, 1820, and recorded in said county of Washington; and that afterwards, viz, on the ninth day of November, in the year aforesaid, Uriah J. Devore, Andrew Burt, and Daniel Dunklin, three respectable disinterested householders in the neighborhood of said tract of land, on application from said administrator, having been first duly sworn as the law directs, did view, appraise, and value all the right, title, &c., of said deceased, in and to said tract of land at the sum and price of eight hundred and seven dollars.

And whereas the said Levi Pettibone, administrator as aforesaid, did advertise the said tract of land to be offered for sale to the highest bidder for cash in hand, on the said second Monday of November, in the year
aforesaid, at the court-house door, in the town of Potosi, in said
205 county of Washington, while the circuit court for said county
should be in session on that day, all the right, title, inter'st, and claim which the said deceased, at the time of his death, had in and to said tract of land, viz, by causing advertisements thereof to be inserted in the Missouri Republican, a newspaper printed and published in the city of St. Louis, in the State, for four weeks successively before the day of sale, and also causing ten printed copies of said advertisements to be put up in the most public places in different parts of the said county of Washington twenty days at least before the day of sale.

And whereas on the said second Monday of November, being the ninth day of said month, in the year aforesaid, the said Levi Pettibone, administrator as aforesaid, did proceed to offer for sale to the highest bidder for cash in hand, at the said court-house door, in the town of Potosi, in said county of Washington, all the right, title, &c., of said deceased in and to said tract of land, pursuant to the notice contained in said advertisements, it being the day appointed by law for holding the circuit court for said

county, at which time the judge of said court not appearing to open said
court, and no person appearing to bid for the said tract of land, the
206 sale thereof was then and there publicly adjourned until the next
day, to which time the said court stood adjourned by law, and the said judge not appearing to open court on the said last-named day, and no person appearing to bid for the said tract of land, on the same being again offered for sale, the sale thereof was then and there again publicly adjourned until the next day, to which time the said court stood adjourned by law.

And on the said last-named day, viz, on Wednesday, the eleventh day of November, in the year aforesaid, the judge of said court having appeared and opened said court, the said Levi Pettibone, administrator as aforesaid, did then and there, at the said court-house door, and while the said court was in session on that day, again publicly offer for sale to the highest bidder, for cash in hand, all the right, title, &c., of said deceased in and to said tract of land, when and where the said Levi Pettibone, being the highest and last bidder for the same at the sum and price of six hundred and six dollars, being more than three-fourths of the appraised value of said tract of land, then and there became the purchaser thereof
at said sum, all which will more fully and at large appear by the
207 records of said court and the report of the said administrator of his
proceedings and sale, filed in said county court, and by said court approved, accepted, and affirmed.

Now, therefore, know ye that we, William G. Pettus, Daniel Griffith, and Micajah McClenny, justices of the county court in and for the said county of St. Charles, and by virtue of the provisions of the statute in such cases made and provided, and the premises aforesaid, and in consideration of the full payment of the said sum of six hundred and six dollars by the said Levi Pettibone to the administrator aforesaid, as acknowledged by said administrator in open court, do hereby sell, transfer, and assign unto the said Levi Pettibone, and to his heirs and assigns, all the right, title, interest, and claim which the said Rufus Pettibone, deceased, at the time of his death had in and to the said tract of land above mentioned and described, with the rights, privileges, and appurtenances to the same in any way belonging, as fully and as perfectly as we, as justices of said county court, by virtue of the premises of the statute in such cases made and provided, can or ought to convey: To have and to hold the said tract of land, with all the rights, privileges, and appurtenances thereof to him, the said Levi Pettibone, and to his heirs and assigns forever.

208 In witness whereof, we have hereunto set our hands and affixed
our seals at St. Charles, in the said county of St. Charles, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and twenty-nine.

(Erasure of two words near end of 4th line, 2nd page, & interlineation of words "advertisements thereof" above same line, before signed, &c., the words "to be offered" interlined above 2nd line from bottom of first page before signed, &c., the words "six" twice written on an erasure.

WM. G. PETTUS. [SEAL.]
DANIEL GRIFFETH. [SEAL.]
M. McCLENNY. [SEAL.]

STATE OF MISSOURI,
County of St. Charles, ss:

Be it remembered that on this twenty-fifth day of November, A. D. 1829, before me, the clerk of the county court within and for the county aforesaid, came William G. Pettus, Daniel Griffith, and Micajah McClenney, esquires, justices of the county court for said county, and who are personally severally well known to me, and acknowledged the foregoing instrument of writing by them severally subscribed to be their act and deed for the purposes therein mentioned.

Taken and certified under my hand and seal of office at St. Charles in said county the day and year above written.

[SEAL.] WM. CHRISTY, JR.

209 STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, recorder in and for said county, do hereby certify that the foregoing deed is truly recorded in my office, book C, pages 182, 183, 184, & 185.

Given under my hand and seal of office.

[SEAL.] ISRAEL MCGREADY,
Recorder.

Certified copy of judgment against Bank of St. Louis.

Certified copy of judgment against Bank of St. Louis & sale & deed of the same land to John Smith, T., as follows:

St. Louis circuit court, November term, 1825, Wednesday, 21st December, 1825.

JOHN SMITH, T.,
vs.
THE BANK OF ST. LOUIS.

Now at this day comes the said plaintiff by his attorney and proves here to the court the publication of the order heretofore made in this case in one of the newspapers published in the city of St. Louis in the manner and according to the direction of said order, whereupon the said defendants, although solemnly called, come not but make default, nor have they pleaded to the action aforesaid of him, the said plaintiff, whereby the said plaintiffs remain therein undefended against them.

Wherefore the said plaintiff ought to recover against the said defendants, and the action aforesaid being founded on a note in writing, and it
210 manifestly appearing to the court that the said plaintiff has sustained damage by reason of the non-performance of the promises and undertakings in the declaration mentioned to the sum of one hundred and two dollars and seventy-five cents, therefore it is considered that the said John Smith, T., recover against the said president, directors, and company of the Bank of St. Louis his damages aforesaid, in form aforesaid by the court assessed, and also his costs and charges by him about his suit in this behalf expended, and that he have thereof execution.

And on the 24th day of May, 1826, the following execution issued:

COUNTY OF ST. LOUIS, *sct:*

The State of Missouri to the sheriff of Washington County, greeting:

Whereas John Smith, T., at our circuit court, before our judge thereof, recovered against the president, directors, & company of the Bank of St. Louis the sum of one hundred and two dollars and seventy-five cents for his damages by him sustained by reason of the non-performance of certain promises and undertakings in his declaration mentioned, & also his costs and charges by him about his suit in that behalf expended, which to the said John Smith, T., were adjudged, as appears to us of record.

And whereas we lately commanded our sheriff of our county of St. Louis that of the goods and chattels, lands and tenements, of the
211 said president, directors, and company in his bailiwick he should cause to be made the aforesaid damages and costs, and that he should have the same before the judge of our said court on the fourth Monday of March then next, to render to the said John Smith, T., the damages and costs aforesaid, and for and that he should certify to our said court how he executed the said writ:

And our said sheriff on that returned to our said court his said writ with his return thereon endorsed as follows, to wit:

No goods or chattels, lands or tenements, in my county whereon to levy this execution.

And because it is sufficiently testified to our said court that the said president, directors, &c., has sufficient goods and chattels, land and tenements, whereof you may cause to be made the aforesaid damages and costs in your bailiwick, therefore we command you that of the goods & chattels, lands and tenements, of the said president, directors, and company in your bailiwick you cause to be made the aforesaid damages and costs, and that you have the same before the judges of our said court on the fourth Monday in July next, to render to the said John Smith, T., the damages and costs aforesaid, and that you certify to our said court how you execute this writ; and have you then and there this writ.

212 Witness Archibald Gamble, clerk of our said court, at his office, this 24th day of May, in the year of our Lord one thousand eight hundred and twenty-six.

[SEAL.] ARCHIBALD GAMBLE, *Clerk.*

On which execution was endorsed the following sheriff's return, to wit:

Made by the sale of the land agreeable to the advertisement within thirty dollars.

A. MILLER, *She'ff.*

[Advertisement.]

Sheriff's sale, land—land!

By virtue of an execution to me directed from the circuit court of St. Louis County, on Tuesday, the 27th of this present month, I will expose to public sale all the right, title, claim, property, and interest of the president, directors, & co. of the Bank of St. Louis in and to a certain tract of land commonly called the "Mine à Burton" tract, formerly owned and occupied by Moses Austin, in Breton Township, Washington County, or so much thereof as shall be sufficient to satisfy the said execution and costs for cash in hand. The sale to commence between ten o'clock in the forenoon and five in the afternoon of said day, at the court-house door, in the town of Potosi, said execution being in favor of John Smith, T., and against the said president, directors, & co. of the Bank of St. Louis.

A. MILLER, *She'ff W. C.*

JUNE 5TH, 1826.

STATE OF MISSOURI,
County of St. Louis, ss:

I, John Ruland, clerk of the circuit court in and for said county,
213 certify the foregoing to be a true copy of the judgment, execution
sheriff's return, & advertisement of sale in the case of John Smith,
T., vs. Bank of St. Louis, as the same now remain of record in my office.

In testimony whereof I have here set my hand and affixed the seal of said court at office, in the city of St. Louis, this 10th day of July, 1837.

[SEAL.] JOHN RULAND, *Clerk.*

Sheriff's deed for Mine à Burton to John Smith, T.

To all people to whom these presents shall come, greeting:

Whereas a certain alias writ of capias ad satisfaciendem on the twen*tieth*-fo'rth day of May, in the year one thousand eight hundred and twenty-six, issued from the clerk's office of the circuit court of St. Louis County, in the State of Missouri, in favour of John Smith, T., against the goods and chattels, lands and tenements, of the president, directors, & company of the Bank of St. Louis, directed to the sheriff of Washington County, and to me, sheriff of the same county, delivered, a copy of which said execution is hereunto annexed, and makes a part and parcel of this deed, by virtue of which said writ I, the said sheriff, did, on the fifth day of June, in the year last aforesaid, levy upon and seize all the right, title,
interest, and property which the said president, directors, & com-
214 pany of the Bank of St. Louis had or possessed in and to a certain
tract of land, to wit, the tract known *by* the Mine au Breton
tract, formerly owned and occupied by Moses Austin, situated in Breton Township, in Washington County, State of Missouri, and the same being by me advertised, by me having six hand-bills set up at six of the most public places in the county by Solomon Brown, deputy sheriff, and a copy of said advertisement annexed, and makes a part of this deed, is as follows:

Sheriff' sale.

By virtue of an execution to me directed from the circuit court of St. Louis County, on Tuesday, the 27' day of this present month, I will expose to public sale all the right, title, claim, property, and interest of the president, directors, & co. of the Bank of St. Louis in and to a certain tract of land commonly called the Mine à Burton tract, formerly owned and occupied by Moses Austin, situate in Breton Township, in Washington County, or so much thereof as shall be sufficient to satisfy the said execution, for cash in hand, the sale to commence between ten o'clock in the forenoon and five in the afternoon of said day, at the court-house door, in the town of Potosi, the said execution being in favor of John Smith, T., and against the said president, directors, & co. of the Bank of St. Louis.

215 And agreeable to the advertisement here recited *and* proceeded to sell the aforesaid tract of land on the twenty-seventh day of June, one thousand eight hundred and twenty-six, while the circuit court was in session, at the court-house door, expose' to sale to satisfy the said execution aforesaid, and John Smith, T., was the last and highest bidder for the sum of thirty dollars:

Now, therefore, know ye that I, Andrew Miller, sheriff of the county of Washington, for and in consideration of the sum of thirty dollars to me in hand paid by the said John Smith, T., fully paid, and by virtue of the authority in me vested by the law, do hereby give, transfer, sell, and assign to him, the said John Smith, T., all the right, title, interest, and property of them, the said president, directors, and company of the Bank of St. Louis, in and to the aforesaid mentioned premises; to have and to hold the said granted and assigned premises and the appurtenances to him, the said John Smith, T., his heirs and assigns, forever.

In testimony whereof I, Andrew Miller, sheriff as aforesaid, have hereunto set my hand and seal at the town of Potosi, this the tenth day of August, one thousand eight hundred and twenty-six.

A. MILLER, *Sheriff.* [SEAL.]

Signed, sealed, and delivered in presence of—

216 WASHINGTON COUNTY, *ss:*

I, John Jones, clerk of the circuit court of said county, do hereby certify that Andrew Miller, esquire, late sheriff of said county, appeared in open court on the 21st day of October, 1826, and acknowledged the above and foregoing instrument of writing to be his act and deed for the purposes therein mentioned. Dated at my office, the 23rd day of October, 1826.

[SEAL.] JOHN JONES, *Clerk.*

COUNTY OF ST. LOUIS, *sct:*

The State of Missouri to the sheriff of Washington County, greeting:

Whereas John Smith, T., at our circuit court, before our judge thereof, recovered against the president, directors, & company of the Bank of St. Louis the sum of one hundred and two dollars and seventy-five cents, for his damage by them sustained by reason of the non-performance of certain promises and undertakings in his declaration mentioned, and also his cost and charges by him about his suit in that behalf expended, which to the said John Smith, T., were adjudged, as appears to us of record; and whereas we lately commanded our sheriff of our county of St. Louis that of the goods and chattels, lands and tenements, of the said president, directors, & company in his bailiwick he cause to be made the aforesaid damage and cost, and that he should have the same before judge of our

217 said court on the fourth Monday of *their* next, to render to the

said John Smith, T., the damage and cost aforesaid, and for and that he should certify to our said court how he executed the said writ; and our said sheriff on that day returned to our said court his said writ with his return thereon endorsed as follows, to wit:

"No goods or chattels, lands or tenements, in my county whereon to levy this execution."

And because it is sufficiently testified to our said court that the said president, directors, and company has sufficient goods and chattels, lands and tenements, whereof you may cause to be made the aforesaid damage and cost in your bailiwick, therefore we command you that of the goods and chattels, lands and tenements, of the president, directors, & co. in your bailiwick you cause to be made the aforesaid damage and cost, and that you have the same before the judge of our said court on the fourth Monday in July next, to render to the said John Smith, T., the damage and cost aforesaid, and that you certify to our said court how you *you* execute this writ; and have you then and there this writ.

Witness Archibald Gamble, clerk of our said court, at office, this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and twenty-six.

[SEAL.] ARCHIBALD GAMBLE, *Clerk.*

218 I certify that this deed was rec'd for record on the 23rd day of October, 1826, & recorded in book B, pages 278, 279, & 280, on the 17th March, 1827.

[SEAL.] JOHN JONES, *Recorder.*

Certified copy of deed of John Smith, T., to William Milam.

Certified copy of deed of John Smith, T., to William Milam, as follows:

This indenture, made this 13th day of July, in the year of Christ 1832, by and between John Smith, T., of the county of Washington, State of Missouri, of the one part, and William Milam, of the county and State aforesaid, of the other part, witnesseth:

That the said John Smith, T., for and in consideration of the sum of one hundred dollars to him in hand paid by the said William Milam, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged and confessed, hath bargained and sold, and by these presents doth bargain, sell, enfeoff, and confirm to him, the said William Milam, his heirs or assigns, all his, the said John Smith, T., right, title, interest, and claim in and to a certain tract or parcel of land called and known by the name of the Austin grant, situated, lying, and being in the county and State aforesaid, and is the same tract of land granted by the
Spanish Government to Moses Austin, and heretofore purchased by
219 said John at sheriff's sale, the deed for which said tract of land
is of record, to which reference may be had for a more particular description of the same; to have and to hold all the interest and claim of the said John Smith, T., in and to said tract of land to the said William Milam, his heirs and assigns, to the only proper use and behoof of him, the said William Milam, his heirs & assigns, forever; and the said John Smith, T., will, for himself and his heirs forever warrant and defend all his, the said John's, right, title, and interest in said tract of land to the said

William, his heirs and assigns, against the claim of him, the said John, or his heirs, but will not warrant and defend the same against the claim or claims of any person or persons whatsoever.

In testimony whereof he, the said John Smith, T., hath hereunto set his hand and seal the day and year first above written.

JNO. SMITH, T. [SEAL.]

Sig'd, seal'd, & in presence of—
P. COLE.

STATE OF MISSOURI,
County of Washington, ss:

Be it remembered that on the nineteenth day of July, in the year of our Lord one thousand eight hundred and thirty-two, before me, Israel McGready, clerk of the circuit court within and for said county,
220 came Philip Cole, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as a subscribing witness, and made oath that Jn. Smith, T., whose name is subscribed to the said instrument of writing as grantor, is the real person who executed the same; that the said John Smith, T., subscribed, sealed, and delivered the same in his presence, and acknowledged the same to be his act and deed for the purposes therein mentioned, and that he, the said Philip Cole, signed the said deed as a witness in the presence and at the request of the said John Smith, T.

In testimony whereof I have hereunto set my hand and seal the day and year aforesaid.

[SEAL.] ISRAEL McGREADY, *Clerk.*

STATE OF MISSOURI,
Washington County:

I, Israel McGready, recorder in and for the county aforesaid, do hereby certify that the foregoing deed is truly recorded in my office, book C, pages 107 & 108.

Given under my hand and seal of office this 24th day of November, 1832.

[SEAL.] ISRAEL McGREADY, *Recorder.*

221 *Deed of Levi Pettibone to Wm. Milam.*

Certified copy of deed of Levi Pettibone to William Milam, as follows

Know all men by these presents that we, Levi Pettibone and Martha Pettibone, his wife, of the county of Pike, in the State of Missouri, for and in consideration of the sum of eight hundred dollars heretofore paid to the said Levi Pettibone by William Milam, of the county of Washington, in the State last aforesaid, have sold, r'leased, transferred, & quitclaimed, and by these presents do hereby sell, release, transfer, and forever quitclaim, unto him, the said William Milam, and to his heirs and assigns forever, all the right, title, interest, & property acquired by the said Levi Pettibone by virtue of a deed made and executed by the justices of the county court of the county of St. Charles, in said State, on the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, of, in, and unto a certain tract or league square of land situate & being in the said county of Washington, and commonly known as the Mine à Breton tract, originally granted by the Spanish Government to Moses Austin, which right, title, &c., is the right, title, &c., which Rufus Pettibone, late of the said county of St. Charles, deceased, had at the time of his death in and to the said tract or league square of land, & was purchased by the said Levi Pettibone at a public sale made, by order of the county court of the said county of St. Charles, by the administrator of the said Rufus Pettibone, deceased, on the eleventh 222 day of said month of November, in the year of our Lord one thousand eight hundred and twenty-nine, to raise money to pay & satisfy the debts of said deceased.

To have and to hold the right, title, interest, and property aforesaid, acquired by virtue of the deed and purchase aforesaid, in and to the said tract or league square of land, with the rights, privileges, & appurtenances to the same belonging & appertaining, unto him, the said William Milam, and to his heirs and assigns forever, so that neither we nor our heirs shall at any time hereafter have, claim, or demand any right or title in and to said tract or league square of land by virtue of the deed and purchase aforesaid.

In testimony whereof we, the said Levi Pettibone & Martha Pettibone, have hereunto subscribed our names & affixed our seals, at the town of Bowling Green, in said county of Pike, this thirteenth day of January, in the year of our Lord eighteen & thirty-four.

LEVI PETTIBONE. [SEAL.]
MARTHA PETTIBONE. [SEAL.]

223 STATE OF MISSOURI,
County of Pike:

Be it remembered that on the 13th day of January, in the year of our Lord one thousand eight hundred & thirty-four, before me, the clerk of the county court within and for the county of Pike aforesaid, personally came Levi Pettibone and Martha Pettibone, his wife, who are both personally known to me the persons whose names are subscribed to the foregoing instruments of writing as having executed the same, and severally acknowledged the said instrument to be their & each of their act and deed for the purposes therein mentioned. She, the said Martha Pettibone, being by me first made acquainted with the contents of said deed, and examined separately and apart from her husband whether she executed the said deed & relinquishes her right of dower in and to the lands and tenements therein mentioned voluntarily, freely, and without the compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed & relinquishes her dower in and to the said lands and tenements therein mentioned voluntarily, freely, & without the compulsion or undue influence of her said husband.

Taken and certified under my hand & seal of office, in the town of Bowling Green, in said county of Pike, the same day and year last aforesaid.

[SEAL.] M. J. NOYES, *Clerk.*

224 STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, clerk of the circuit court within and for said county and ex officio recorder in and for said county, do hereby certify that the foregoing deed from Levi Pettibone & wife to William Milam is truly recorded in my office, book C, pages 200 and 201.

In witness whereof I have hereunto *sit* my hand and seal of office, at office, in the town of Potosi, this 24th day of February, 1834.

[SEAL.] I. McGREADY, *Recorder.*

BOWLING GREEN, *January 13th*, 1834.

WM. MILAN, Esqr.:

DEAR SIR: I send you, pursuant to your request, a deed of relinquishment for my interest in Mine à Briton property, acquired by purchase of adm'r of R. Pettibone, dec'd, in Nov., 1829, & deeded to m*y* by county court of St. Charles County, which I suppose will be sufficient for the purposes intended, &c.

I am, respectfully, yours, &c.,

LEVI PETTIBONE.

225 *Deed of Levi Pettibone to Wm. Milam.*

Certified copy of deed of Levi Pettibone and wife to Wm. Milam, as follows:

LEVI PETTIBONE, IN HIS OWN RIGHT AND AS administrator of Rufus Pettibone, deceased, Eliza Pettibone, Margaret Louisa Pettibone, Claudius John Pettibone, Henry Levi Pettibone, and William Rufus Pettibone, children and heirs of Rufus Pettibone, deceased, by the said Levi Pettibone, their guardians,

vs.

RISDON H. PRICE, RICHARD T. McKENNEY, Theophilus W. Smith, The President, Directors, and Company of the Bank of Edwardsville, and William Milam.

And now, at this day, this cause coming on to be heard by consent of parties, in the presence of counsel on both sides, on the pleadings and proofs in the cause, the bill being taken as confessed against Richard T. McKenney, Theophilus W. Smith, and The President, Directors, & Company *the* the Bank of Edwardsville, and the defendant William Milam by his answer admitting the truth of the statements made in the original and supplemental bills, and the court, taking into consideration the statements in the bills and the proofs in the cause, is of the opinion that the said Levi Pettibone, in his own right and as administrator of the said Rufus Pettibone, deceased, ought to receive of the said defendants the sum of sixteen hundred dollars, the amount stated in the bill, with
226 interest, which by the statements in the bill and proofs in the
cause is properly and justly chargeable upon the said tract of land

conveyed by the said Moses Austin to the said Levi Pettibone and Rufus Pettibone and James Bryan, of which said claim upon the said tract of land the said defendants McKinney and Smith and The President, Directors, and Company of the Bank of Edwardsville had notice before they became interested in the said tract of land so conveyed as aforesaid. Thereupon it is ordered, adjudged, and decreed that the said Levi Pettibone, complainant, in his own right and as administrator of the said Rufus Pettibone, deceased, recover the said sum of sixteen hundred dollars, to be satisfied and paid out of the said tract of land conveyed by the said Moses Austin to the said Levi Pettibone and Rufus Pettibone and James Bryan, which is described in said conveyance as the whole of that certain tract of land heretofore granted to the said Moses Austin by the Spanish Government, and confirmed to him by the Government of the United States, containing seven thousand one hundred and sixty arpens, and being a league square, situated at and near the Mine à Breton, in the county of Washington and Territory (now State) of Missouri, being the only concession from the Spanish Government to the said Moses Austin, from which was excepted such parcels thereof as the said Moses had theretofore sold and conveyed, to wit, to John Rice Jones, fourteen hundred and
thirty-two arpens; to the county of Washington, forty-five arpens;
227 to a Mrs. Perry, two hundred and sixteen arpens; to a Mr. Rug-
gles, two hundred and forty-three arpens; to a Mr. McGready, fifty-eight arpens; to John Brickey, senior, four arpens; to Mr. Ficklin, three hundred and twenty-four arpens; to Mr. McCormick, forty-five arpens; to Mr. Brock, one hundred and sixteen arpens; which said several pieces of land above named and excepted are severally described in the deeds and contracts to the said purchasers for the same. And he, the said Levi Pettibone, as complainant in his own right and as administrator of Rufus Pettibone, admits and acknowledges that he has received, here in court, from William Milam, one of the above-named defendants, the full amount of sixteen hundred dollars above decreed in favor of complainant.

Wherefore it is ordered, adjudged, and decreed that all the estate, right, and title and interest acquired by the said Levi *Levi* and Rufus Pettibone to the tract of land above described under and by virtue of the said deed from the said Moses Austin and wife, and under and by virtue of a resolution of the president and directors of the Bank of St. Louis in the bill of complaint mentioned, and in any other manner whatever, shall pass from the above-named Levi Pettibone and from the above-named children and heirs of Rufus Pettibone, to wit, Eliza Pettibone, Margaret Louisa Pettibone, Claudius John Pettibone, Henry Levi Pettibone, and Will-
iam Rufus Pettibone, and be vested in the said defendant, William
228 Milam, and his heirs, in as full and ample a manner as the said
Levi and Rufus held the same; and the court doth further order, adjudge, and decree that the said complainants recover from the said defendants their costs and charges by them about their suit in this behalf laid out and expended, and that they have thereof execut*ed*.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Archibald Gamble, clerk of the circuit court within and for the county aforesaid, certify that the foregoing is a true copy of a decree rendered by said court at its March term, in the year eighteen hundred and thirty, in a certain cause wherein Levi Pettibone and others were complainants and Risdon H. Price and others were defendants, as the same remains of record in my office.

Given under my hand and the seal of said court, at office, this twenty-eighth day of May, eighteen hundred and thirty.

ARCHIBALD GAMBLE, *Cl'k.*

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, recorder in and for the county aforesaid, do hereby certify that the foregoing decree of Levi Pettibone and others vs. Risdon H. Price and others is truly recorded in my office, book B, pages 495 and 496.

Given under my hand and seal of office, at Potosi, this 24th August, 1830.

ISRAEL McGREADY,
Recorder.

229 *Bill in equity, answer, decree, & final decree on case Deane vs. Bryan et al.*

Certified copy of bill in equity, answer, and decree in chancery suit, John Deane vs. W. J. Bryan et al., & final decree, as follows:

In chancery.

To the circuit court of the county of Washington, in the State of Missouri:

Humbly complaining, sheweth unto this honorable court, your orator, John Deane, of the city and State of New York, that one Moses Austin, late of the Territory of Missouri, since deceased, on the eleventh day of March, in the year one thousand eight hundred and eighteen, being seized and *passed* of a tract of land, excepting some parcels of same previously sold and conveyed by him, situated in the county of Washington, in the then Territory (now State) of Missouri, known as the Mine à Breton survey, granted to the said Austin by the proper authorities of the Spanish Government at New Orleans, on the fifth day of July, in the year one thousand eight hundred and two, and subsequently recognized by the authorities of the United States as a complete grant, containing seven thousand one hundred and fifty-three arpens thirty-two and two-thirds poles, equal to six thousand eighty-six acres or thereabouts, for and in consideration of the sum of fifteen thousand dollars to him paid by the president, directors, and company of the Bank of St. Louis, granted, bargained, and sold unto the said president,
230 directors, and company of the Bank of St. Louis, and their successors in office forever, a certain tract of land situated in the county of Washington aforesaid, bounded as follows: Beginning at the corner of the Mine à Breton survey, so called, in the front of the late dwelling of the said Moses Austin, known by the name of Durham Hall; thence running southwest seventy-two poles, more or less, to a corner of the said Mine à Breton survey; thence with the said survey west-northwest to another

Mortgage by Austin to Bank of St. Louis.

corner of the said survey on the citadel; thence southwest on the same survey to the dividing line between John Rice Jones and the said Moses Austin; thence with the line to the west line of the Mine à Breton survey; thence west-northwest with the last-mentioned line to the lower division line between John Rice Jones and the said Moses Austin, near Bates's Creek, so called; thence along said line down said creek to the south corner of a tract of land belonging to Elias Bates; thence down the said creek to a northeast corner of the survey of said Bates; thence along the line of the said Bates's survey to the north corner thereof; thence northeast, crossing the Old Mill Creek, to the Boonslick road; thence up said road, as same runs, to the north corner of the town plat of Potosi; thence along the boundary line of the said town of Potosi to the west corner thereof and to a lot sold Enoch Winds; thence along the boundary line of the said town of Potosi to the south corner thereof; thence to the
place of beginning; containing six hundred and forty acres,
231 together with the house called Durham Hall, and all other im-
provements, buildings, tenements, hereditaments, and appertenances belonging to the said described tract of land, excepting therefrom the following lots of land which had been theretofore sold and conveyed, to wit: twenty-five acres of land to John Rice Jones; one acre, Israel McGready; one-half acre to John I. Brickey; one acre to Enoch Winds; about three acres to John Brickey, senior; and two acres reserved for the said Israel McGready, situate between the lot of John Brickey and that of Enoch Winds.

Upon condition, nevertheless, that if the said Mosses Austin should and did well and truly pay, satisfy, and discharge a debt of fifteen thousand dollars or thereabouts then due from the said Moses Austin to the said president, directors, and company of the Bank of St. Louis, secured by negotiable notes, subject to renewal according to the rules and regulations of the said bank, and to discount, and all other sums of money which might be by the said president, directors, and company of the Bank of St. Louis loaned to him or he might be liable to pay as security or endorser for other persons, or otherwise, than said conveyance to be void; otherwise to continue in full force, and the said granted, bargained, and sold premises to remain mortgaged to secure the payment of all sums then due or which he might thereafter contract with the said bank, and be liable to be foreclosed and sold according to the statute in such cases made and pro-
vided; all which will more fully and at large appear by a copy of
232 the mortgage and deeds executed by the said Moses Austin to the
said president, directors, and company of the Bank of St. Louis, dated the eleventh day of March, in the year one thousand eight hundred and eighteen, herewith exhibited, marked "J. D. No. 1," the original being in the possession or power of the complainant, reference being thereunto had.

And your orator further sheweth that the tract of land mortgaged as aforesaid is part of the tract hereinbefore described as the Mine à Breton survey, and whereof the said Moses Austin was seized and possessed.

And your orator further sheweth that a term of the superior court for the northern circuit of the Territory of Missouri, began and held at the town of St. Louis on the twentieth day of September, in the year one thousand eight hundred and nineteen, the said president, directors, and company of the Bank of St. Louis recovered a judgment in the said court against the said Moses Austin for the sum of fourteen thousand and one dollars and eighty-five and a fourth cents damages, together with their costs charges by them about their suit in that behalf expended, as in and by a duly certified transcript of the record of said judgment herewith exhibited, marked "J. D. No. 2," reference being thereunto had, will appear.

And your orator further showeth that at a term of the same superior court for the same circuit, begun and held at the town of St. Louis on the twenty-sixth day of April, in the year one thousand eight hundred and
nineteen, one Alexander McNair recovered a judgment in the same
233 court against the said Moses Austin for the sum of four hundred
and fifty-six dollars and seventy-five cents damages, together with his costs and charges by him about his suit on that behalf laid out and expended, as in and by a duly certified transcript of the record of same judgment herewith exhibited, marked "J. D. No. 3," reference being thereunto had, will appear.

And your orator further sheweth that upon said judgments executions were issued returnable to the April term, in the year one thousand eight hundred and twenty, of said court, directed to the sheriff of the county of Washington aforesaid—copies thereof are set out as far as practicable in the Exhibit' No. 2 and 3—which were by the said sheriff levied on all the of Moses Austin, aforesaid, to the tract of land hereinbefore described as the Mine à Breton survey, with all and singular the buildings and improvements thereon, excepting out of said tract of land three several lots, to wit: One to Israel McGready, containing two acres and thirteen poles, begin'ing at the Northwest corner of John S. Breckey' lot, on Breton street, in the town of Potosi, running with said street North fifty-eight degrees West nine poles to a stake; thence South three and a half degrees West sixteen poles to a thorn-bush; thence South forty-seven degrees West seven poles and fifteen links to Mine Creek; thence up said creek South thirty degrees East eleven poles to a stake corner to Israel McGready's; thence with his line North thirty-two degrees, East twenty-
four poles to a stake; thence South thirty-two degrees East six
234 poles and three links to the southwest corner of John S. Brecky's
lot; thence with said lot North fifty-eight degrees East thirteen poles and five links to the beginning. One lot of twelve acres to John Breckey, to be laid off according to the following boundaries, to wit: bounded East by Potosi and Enoch Wind's lot, West by Jared Brekey's lot and hollow below said Jared Breckey's, to run to the head thereof; thence to the lots laid off by Moses Austin adjoining the town of Potosi; thence with said lots so as to include the said twelve acres. One lot of one acre to Jared Breckey adjoining the said Jared's former purchase of Moses Austin at the lower end of his lot the whole width thereof, and the same
Advertisement and sale. was by the said sheriff, after being dulyadvertised, sold under and by virtue of said executions on the twenty-first day of March, in the year one thousand and eight hundred and twenty, at the court-house door in the county of Washington aforesaid, on the second day of the term of the circuit court of the county of Washington aforesaid, and while the same court was in session, and upon said *sail* one Charles R. Ross, as agent for and on behalf of the president, directors, and company of the Bank of St. Louis aforesaid, being the highest and last bidder for the same, at

the sum of seven thousand dollars or thereabouts, became the purchaser
thereof; and thereupon the said sheriff of Washington County aforesaid,
by his deputy, executed to the said Charles R. Ross an instrument
235 in writing without seal or scroll, the affixing of the same having
been inadvert*a*ntly and by mistake omitted, reciting therein the executions aforesaid, the bid by the said Charles R. Ross or agent, as aforesaid, and conveying to him in fee the tract of land sold as aforesaid under said executions, which instruments in writing was duly acknowledged before the circuit court of the county of Washington aforesaid, in open court, on the twenty-second day of March, in the same year, and a certificate thereof under the seal of the same court endorsed on same, and was, together with certificate, recorded in the recorder's office of the county of Washington aforesaid on the twenty-ninth day of May, in the same year, all which will more fully and at large appear by a copy of the said instruments in writing and the endorsements herewith exhibited, marked "J. D. No. 4," the original not being in possession or power of the complainant, and to which he refers.

Agency of the purchase of sh'ff's sale for the bank.

And your orator further sheweth that in the purchase so made as aforesaid by the said *by the said* Charles R. Ross, at said sheriff's sale, the said Charles R. Ross acted as the agent of the said president, directors, and company of the Bank of St. Louis; that no money was advanced by the said Ross on such sale, and that he purchased and held the same as trustee for the said president, directors, and company of the Bank of St. Louis, by whom was advanced whatever money was
paid on said p*e*rchase made as aforesaid by the said Charles R. Ross,
236 and was made by him for and in behalf of the said president, di-
rectors, and company of Bank of St. Louis in conformity to a resolution of the board of directors of said bank passed on the seventeenth day of March in the same year, a copy of which is herewith exhibited, marked "J. D. No. 5," the original not being in the possession or power of the complainant, to which he refers.

And your orator further showeth that the said president, directors, and company of the Bank of St. Louis, on the nineteenth day of April, in the year one thousand eight hundred and twenty, executed a deed to the said Charles R. Ross, in which it was rec*ed*ed that the said Ross, a' agent for them, and in conformity to a resolution of the board of directors of the said bank passed on the seventeenth day of March, in the year one thousand eight hundred and twenty, purchased, at sheriff's sale, at Potosi, in the county of Washington, all right, title, claim, and interest of Moses Austin to certain property, describing the same, excepting out of the same three several lots, describing the same, and which property and exceptions are the same described in the instrument in writing executed as aforesaid by the sheriff of the county of Washington to the said Charles R. Ross, and hereinbefore shown; and was further recited that the said Moss, in cap*i*city of agent as aforesaid, did, on the twenty-first day of March, in the year one thousand eight hundred and twenty, receive a deed from the sheriff of the county of Washington for the property purchased by him as aforesaid, which deed i*n* the same with the instrument in writing aforesaid executed as aforesaid by the sheriff of the county of Washington to the said Charles R. Ross; and was further recited that the board of directors of said bank had previously arranged the claims which were appropriated to

237 the payment of the purchase-money for the property purchased as aforesaid to Risdon H. Price, Samuel Hammond, Rufus Easton, and Robert Simpson to indemnify them for the payment of ten thousand dollars, assumed by them to be paid to the Bank of Edwardsville for the Bank of St. Louis, and for other purposes, and they, the said president, directors, and company of the Bank of St. Louis, did thereby, in consideration of the matters recited therein as aforesaid, release, abandon, and transfer to the said Charles R. Ross and his heirs and assigns forever all the right, title, interest, and claim, as well in equity as at law, which they had into and upon the property and t'act of land thereinbefore described, together with all the privileges and appurtenances to the same in any way belonging; nevertheless, in trust for the purposes following, and upon the express condition, that the said Charles R. Ross, his heirs or assigns, should dispose of and sell the same (property) under the direction and by the advice and consent of the said Price, Hammond, Easton, and Sempson, or any two of them, and should deliver and pay over to the said Price, Hammond, Easton, and Simpson, or their representatives, jointly, all the proceeds of the sale of the same property, or any part thereof; which deed was duly acknowledged and recorded in the office of the recorder of the county of Washington aforesaid on the fifteenth day of June in the same year, all which will more fully and at large appear by a copy of the said deed and its endorsements, herewith exhibited, J. D. No. 6, the
238 original not being in the possession or power of the complainant, and to which he refers.

Direction by Simpson et al to Ross to convey.

And your orator further shews, on the twenty-first day of December, in the year one thousand eight hundred and twenty, the said Robert Simpson, Rufus Easton, and Samuel Hammond executed their deed of that date, wherein they recite the deed last mentioned from the president, directors, and company of the Bank of St. Louis to Charles R. Ross, and direct, advise, and consent that the said Charles R. Ross or his legal representatives, for and in consideration of the sum of ten thousand dollars, with interest thereon from and after the day of , in the year one thousand eight hundred and nineteen, executed by the said Price, Hammond, Sampson, and Easton to the president, directors, and company of the Bank of Edwardsville, and pursuant to the powers and privileges granted to and vested in them by the deed therein recited, sell, assign, transfer, convey, and deliver to the said Risdon H. Price, in fee, the tract of land last mentioned and described, and also that the said Ross, in his capacity of trustee as aforesaid, sell, *origin*, transfer, convey, and deliver to the said Risdon Price, in fee, all the right, title, interest, property, and claim which was of Moses Austin aforesaid in and to the same tract of land, and was subsequently in the said Charles R. Ross as agent and trustee aforesaid, which deed *which* was duly acknowledged and recorded in the office of the recorder of the county of Washington aforesaid on the second day of June, in the year one thousand eight hundred and twenty-one, all which will more fully and
239 at large appear by a copy of the said deed and its endorsements, herewith exhibited, marked "J. D. No. 7," the original not being in the possession or power of the complainants.

Deed, Ross to Price.

And your orator further shews that on the twenty-first day

of December, in the year one thousand eight hundred and twenty, the said Charles R. Ross, as agent and trustee of the president, directors, and company of the Bank of St. Louis, executed a deed to the said Risdon H. Price, wherein he recites he, as agent for the president, directors, and company of the Bank of St. Louis, and in conformity to a resolution of the board of directors of the said bank passed on the seventeenth day of March, in the year of one thousand eight hundred and twenty, purchased at sheriff's sale, at Potosi, in the county of Washington, all the right, title, claim, and interest Moses Austin to certain property, describing the same (which is the same that herein last mentioned), and that he, in his capacity of agent as aforesaid, did, on the twenty-first day of March, in the year one thousand eight hundred and twenty, receive a deed (which deed is the same with the instrument in writing aforesaid, executed as aforesaid by the sheriff of the county of Washington to the said Charles R. Ross) from the sheriff of the county of Washington for the property purchased by him as aforesaid; that the board of directors of the Bank of St. Louis had previously assigned the claims which were appropriated to the payment of the
purchase money for this property to Rsidon H. Price, Samuel
240 Hammond, Rufus Easton, and Robert Simpson, to indem-
nify them for the payment of ten thousand dollars assumed by them to be paid by the Bank of Edwardsville for the Bank of St. Louis, and for other purposes, and that the said president, directors, and company of the Bank of St. Louis did, on the nineteenth day of April, in the year one thousand eight hundred and twenty, release, abandon, and transfer to him in fee all the right, title, and claim, as well in equity as at law, which they had in and to and upon the property and tract of land herein last mentioned and described, together with all the privileges and appurtenances to the same in any wise belonging, in trust, and upon the condition that he, his heirs, assigns, should sell and dispose of the same (property) under the direction, and by the advice, and consent of the said Price, Hammond, Easton, and Simpson, or any two of them, and should deliver and pay over to the said Price, Hammond, Simpson, and Easton, or their representatives, jointly, all the proceeds of the sale of the same (property), or any part thereof; and that Hammond, Easton, and Simpson, for whose benefit and under whose control the said tract of land, the same herein last described, was conveyed to and held by him, and on the day of the date of this deed not executed by him in and by a certain instrument in writing, under their hands and seals, authorize, order, and require him, the said Ross, to sell, assign, transfer, convey, and deliver to the said Risdon H. Price, and to his heirs and assigns forever, all and singular the
said tract of land hereinbefore last described and mentioned, and
241 also in his capacity of trustee aforesaid to make *to make* and execute
good and sufficient covenants of warranty to the said Price, his heirs and assigns forever, for all the right, title, interest, property, and claim which was of Moses Austin in and to the said last-mentioned tract of land, and was subsequently vested in him, the said Ross, as agent and trustee aforesaid, and did thereby, for in consideration of the authority and order signed by the said Hammond, Easton, and Simpson as aforesaid, and in further consideration of the *same* one dollar to him paid by the said Price, and also in execution of the power and trust in him reposed, grant, bargain, and sell to the said Risdon H. Price and to his

heirs and assigns forever all and singular the tract of land hereinbefore last mentioned and described, or so much thereof as had been and was then vested in him as trustee for the said Price, Hammond, Simpson, and Easton, and in pursuance of the authority and in execution of the trust in him reposed as aforesaid, and in capacity of agent or trustee did warrant, secure, and forever defend the title of said tract of land thereby conveyed to him, the said Price, his heirs and assigns forever, against the lawful claims of all and every person or persons whatever, all which, will more fully and at large appear by a copy of the said deed herewith exhibited, marked "J. D. No. 8," the original not being in the possession or power of the complainant.

And your orator further shews that on the seventh day of April, in the year one thousand eight hundred and twenty-one, the said Risdon
242 H. Price, by his deed of that date, executed by him to Benjamin Stephenson, Richard T. McKenny, and Theophilus W. Smith, reciting that whereas Risdon H. Price, Robert Simpson, Samuel Hammond, and Rufus Easton did, on the twenty-second day of February, in the year one thousand eight hundred and nineteen, execute to president, directors, and company of the Bank of Edwardsville two promissory notes for the sum of five thousand dollars each, upon which suits had been instituted by the bank and were then pending against them; and whereas Risdon H. Price had assumed upon himself individually the payment of the dept aforesaid, together with the interest thereon and all costs that had accrued thereon and all the costs that had accrued or might accrue in the prosecution of said suit, did, in consideration of the premises (recitals) and of the stipulations thereinafter in said deed contained and for the purpose of securing to the said Bank of Edwardsville the ultimate payment of the said debt at the times and in the manner thereinafter in said deed mentioned, grant, bargain, and sell in trust to said Benjamin Stephenson, Richard S. McKenney, and Theophilus W. Smith, their heirs and assigns, for the use of the Bank of Edwardsville, in the manner thereinafter in said deed appointed, the tract of land hereinbefore mentioned, describing the same and identifying it as being the same purchased by the said Charles R. Ross as agent of the Bank of St. Louis, at sheriff's sale, on the twenty-first day of March, in the year one thousand eight hundred and twenty, and conveyed by the said Ross to the said Price, under and by virtue of a deed of
243 release executed to him by the president, directors, and company of the Bank of St. Louis, in trust for the said Risdon H. Price, Robert Simpson, Samuel Hammond, and Rufus Easton, together with three other tracts of land situate in the county of St. Louis and State of Missouri, in trust to sell and dispose of the said several tracts or such portion or portions thereof as may be sufficient to raise from time to time the several sums of money thereinafter in said deed mentioned as the same became due and payable; provided the said Risdon H. Price should fail or neglect or refuse to pay the same, that is to say, the sum of eighteen hundred and sixty-six dollars sixty-six and two-thirds cents, on the first day of April, in the year one thousand eight hundred and twenty-two, being the amount of interest that will then be due upon the said sum of ten thousand dollars and the principal sum with interest thereon, equal annual instalments from the said first day of April, for which said several sums the said Price had that day executed his four promissory notes, and provided also if

it became necessary to sell and dispose of any portion of the property thereby conveyed for the purpose aforesaid, it should be the duty of the said trustees to sell all the other lands before the tract situate in the county of Washington, and in every instance of sale to give at least thirty days' notice in some newspaper printed in the town of St. Louis; and provided, moreover, it should be the duty of the said trustee, his heirs and assigns, as soon as the objects of the trusts should be fulfilled and accomplished, to execute to the said Price, his heirs
244 and assigns, or to whomsoever he should appoint, a deed of release
for the premises therein described on such portion or portions as should remain vested in them and undisposed of. for the purposes of that deed and to pay over to the said Price, his heirs and assigns, all moneys arising from such sale or sales that might remain in their hands after accomplishing the objects of that trust, and defraying all necessary expenses attending such sale or sales; and provided, moreover, that any or two of the trustees therein named should have full power or authority to act in *in* premises in the event of the death, sickness, inability, or absence of the other or others in as full and ample a manner to all intents and purposes as the three could or should do were they all present and concurring therein, all which will more fully and at large appear by a copy of the said deed herewith exhibited, marked "J. D. No. 9," the original not being in the possession or power of the complainant, and to which he refers. And your orators further sheweth that on the twenty-seventh day of April, in the year one thousand eight hundred and twenty-one, a settlement was had between the said Moses Austin and the said president, directors, and company of the Bank of St. Louis, pursuant to a resolution of the bank of directors of the said bank adopted on the eleventh day of same month, a copy of which is herewith exhibited, marked "J. D. No. 10," the original not being in the possession or power of the complainant, and in that set-
245 tlement the said Moses Austin was allowed the sum of eleven thou-
sand three hundred and sixty dollars in consideration of the said tract of land purchased by the said Charles R. Ross, as agent for the said president, directors, and company of the Bank of St. Louis, at sheriff's sale, as hereinafter mentioned, and by the said directors and company of the board of St. Louis sold as aforesaid to the said Risdon H. Price.

And your orator further sheweth that on the eighteenth day of May, in the year one thousand eight hundred and sixty-six dollars sixty-six and two-thirds cents, due on the first day of April, in the year last aforesaid as declared in the deed executed by the said Risdon H. Price to the said Stephenson, McKenney, and Smith, being due and unpaid, the said Benjamin Stephenson, Richard T. McKenney, and Theophilus W. Smith, as trustees of the Bank of Edwardsville, pursuant to the terms of the deed last aforesaid executed by the said Risdon H. Price to them, dated seventh day of April, in the year one thousand eight hundred and twenty-one, publickly advertised in a newspaper called the St. Louis Enquirer, published at St. Louis, in the State of Missouri, that by virtue and in pursuance of the powers contained in a deed of trust made and executed by Resdon H. Price and Mary, his wife, bearing date the seventh day of April, in the year one thousand eight hundred and twenty-one, being the same deed of that date thereinbefore mentioned, they would expose to public sale for ready money, at the house of William H. Hopkins, in the

246 town of Edwardsville, on the twenty-seventh day of June next thereafter, at the hour of twelve o'clock noon of the same, the whole or as much of the following, and describing the same (which is the same described in the deed hereinbefore shown, executed by the said Resdon H. Price to the said Stephenson, McKenney, and Smith, and dated the seventh day of April, in the year one thousand eight hundred and twenty-one) as will sufficient to raise the sum of eighteen hundred and sixty-six dollars and sixty-six and two-thirds cents, being the first installment named in said deed, and which the said Price had neglected to pay agreeably to the conditions in said deed specified, and that the whole of said property, or as much thereof as may be required to raise the sum of money in said advertisement named, would be struck off to the highest bidder, a copy of which advertisement is herewith exhibited, the original not being in the possession or power of the complainant in the original deed herewith exhibited, marked "J. D; No. 11" that the said Stephenson, McKinney, and Smith, as trustees aforesaid, by virtue of the power and authority given to them as such trustees, and for the purposes in the deed of trust aforesaid, executed by the said Risdon H. Price to them, provided for and expressesd, did, on the said twenty-seventh day of June, in the year one thousand eight hundred and twenty-two, at the house of William H. Hopkins, in the town of Edwardsville, at the hour of twelve o'clock of same day, agreeably to the public advertisement hereinbefore shewn the sum of eighteen hundred and sixty-six dollars sixty-six and two-thirds cents, due on the first day of April, in the same year as declared
247 in the deed executed by the said Risdon H. Price to them, being unpaid, proceed to offer for sale the whole of the property described in said last-mentioned deed, or as much of said property as would be sufficient to raise the sum of eighteen hundred and sixty-six dollars and sixty-six and two-thirds cents, as in said deed declared, and which the said Risdon H. Price had neglected to pay agreeably to the provisions of the same, and which had become forfeited and was then due, and having sold first the parcels of land situate in the county of St. Louis and the lot in the town of St. Louis, and the proceeds of said sale not being sufficient to pay and discharge the said sum of eighteen hundred and sixty-six dollars sixty-six and two-thirds cents, the same amounting to six hundred and ten dollars only, they then and there offered for sale the tract of land situate in the county of Washington aforesaid, and in some deed and advertisement described, and one Louis Devotion being the highest bidder for the same became the purchaser thereof at the price and sum of nine thousand dollars; that the said Stephenson, McKinney, and Smith accordingly, on the twenty-ninth day of June, in the same year, for and in consideration of the premises and of the said sum of nine thousand dollars to them paid by the said Louis Devotion, and in, under, and by virtue of the said deed executed by the said Risdon H. Price to them in trust as aforesaid, and of the advertisement aforesaid *or* trustee' as aforesaid, granted, bargained, and sold, aliened, and con-
248 firmed to the said Louis Devotion, his heirs and assigns, the said tract situate in the county of Washington aforesaid, and by them sold as aforesaid to the said Louis Devotion, with all and singular the buildings, improvements, and appurtenances, privileges and advantages in any wise belonging or appertaining to the same, all of which will more fully and

Deed from Stephenson et al. to Devotion.

large appear by the deed executed by the said Stephenson, McKenney,
and Smith to the said Louis Devotion of the twenty-ninth day of June,
in the year one thousand eight hundred and twenty-two, herewith exhibited,
marked "J. D. No. 11," reference being thereunto had.

And your orator further sheweth that on or about the first day of October,
in the year one thousand eight hundred and twenty-two, at the
county of St. Louis and in the State of Missouri, the said Louis Devotion
died intestate, and afterwards, on the thirty-first day of same month, letters of
administration were duly granted by the county court of the county of
Letter of administration to Savage and Wash. St. Louis aforesaid to one William H. Savage and Robert
Wash on the estate of said intestate, who took upon themselves
accordingly the administration of said estate; that at the November
term of said county court, in the year one thousand eight hundred and
Surrender of letters by Wash. twenty-nine, the said Robert Wash surrendered his letters of
administration, a copy of which letters and surrender are
herewith exhibited, marked "No. 12;" that at the November term
of same court, in the year one thousand eight hundred and thirty-one,
the said William H. Savage, sole administrat*ion* of the estate
of said Louis Devotion, deceased, presented his petition to the
249 same court, setting forth that he had administered all the personal
asse*ts* of the said intestates which had come to his
hands or possession or under his control; that as far as he knew or
believed there were no other goods or chattels belonging to the estate of
his intestate; that the estate of his intestate was largely indebted, to wit,
in the sum of twenty-four thousand eight hundred and sixteen dollars
thirty-five and three-fourths cents, exclusive of interest, setting f*ou*rth the
names of the creditors; that the credits of the estate as appeared in the account
therewith exhibited amounted to the sum of fifteen thousand five
hundred and thirty-two dollars sixty-eight and three-fourths cents; that
there remained a deficiency of personal property to the amount of nine
thousand two hundred and eighty-three dollars sixty-seven cents, exclusive
of interest and contingent expenses accruing; that there belonged to the
estate of his intestate a claim to a certain tract of land in the county of
Washington and State of Missouri, called the Mine à Breton tract, and
containing about one league square, excepting therefrom several smaller
tracts which had been sold out of the same, which tract was originally
granted to Moses Austin; that he knew of no other lands in the State of
Missouri belonging to said estate, and praying, in order to pay the debts
An order of sale. due from the estate, that an order might be made to sell said
tract, and such proceedings were had thereon that at the August term, in
the year one thousand eight hundred and thirty-three, of same court
250 it was ordered and decreed by the same court that the said administration
should expose to sale, at public vendue, on the second day of
the sitting circuit court of Washington County, at the then next March term
thereof, at the court-house door of the said county, and during the sitting
of the said circuit court, between the hours of nine o'clock in the forenoon
and five o'clock in the afternoon of that day, the tract of land in the petition
mentioned, describing the same, which is the same heretofore described
as conveyed by Stephenson, McKenney, and Smith to intestate, which said
sale was directed to be made on the following terms, that is to say, one-fourth
of the purchase-money cash, the balance on credit of six and twelve

months, to be secured by a deed of trust on the premises, first having the same appr'ised according to law, and notice of the time, terms, and place of sale published at least four weeks successively prior to the day of sale in some newspaper printed in the State of Missouri, and also by at least ten advertisements put up in the most public places in the said county of Washington for at least twenty days before the day of sale; that the said ad-
Compliance with terms of date.
ministrator before the day of sale caused the said tract of land to be appr'ised according to law; that the said administrator did cause public notice of the time, place, and terms of sale to be given by a publication in the Missouri Republican, a newspaper printed in the State of Missouri, for at least four weeks successively prior to the
day of sale, and also by at least ten advertisements put up
251 in the most public places in the county of Washington for at least
twenty days before the day of sale; that at the said time and place in the said decree and notice specified, and during the setting of the circuit court as therein directed and upon the terms in the said decree directed, the said William H. Savage, administrator as aforesaid, did expose said tract of land in the said decree specified to sale at public auction, when and where your orator became the purchaser of the same at the price and sum of four thousand dollars, and that at the next term of same county court, being May term, in the year one thousand eight hundred and thirty-four, the said
Report of sale.
William H. Savage, administrator as aforesaid, reported his procedings to said count' court, verified by affidavit and accompanied by the certificate of appr'isement and copy of advertisement agreeably to law, which were approved of the court, who thereupon at said term ordered that the said administrator make a deed to your orator on condition that he comply with the terms of the said sale or pay the purchase-money within one year from the date of said order, all which will more fully and at large appear by a duly certified transcript of said petition and proceedings therein exhibited, marked "J. D. No. 13," reference being thereto had.

Deed from Devotion. adm'r, to Deam.

And your orator further sheweth that the said William H. Savage, administrator aforesaid, on the twenty-sixth day
of May, in the year one thousand eight hundred and thirty-five,
252 for and in consideration of the said sum of four thousand dollars to
him paid by your orator, executed a deed for the tract of land purchased by him as aforesaid, reciting the order of sale, the appr'sement, the advertisement, the consideration, and the sale aforesaid, and thereby convey' to your orator in fee all the right and title and interest which the said Louis Devotion, the intestate, had in and to the premises so sold as aforesaid, together *together* with all the rights, privileges, and appertenances thereunto belonging, which deed was duly acknowledged and recorded in the recorder's office of the county of Washington aforesaid, on the eleventh day of July, in same year, all which will more fully and at large appear by the deed executed as aforesaid by the said William H. Savage to your orator, and endorsements thereon, herewith exhibited, marked "J. D. No. 14," reference being thereunto had; and your orator further sheweth that on the fifteenth day of February, in the year one thousand eight hun-
Deed from Austin to Pettibone & Bryan.
dred and twenty, the said Moses Austin, by his deed of that date, granted and bargained and sold to James Bryan in fee one undivided half, to Rufus Pettibone in fee one undivided fourth, and

to Levi Pettibone in fee one undivided fourth of the tract of land conveyed as aforesaid to your orator, with the understanding in same deed expressed that the said James Bryan, Rufus Pettibone, and Levi Pettibone took the tract of land thereby conveyed at their own risk and hazard against 253 certain judgments and mortgage therein expressed, that is to say, against the following judgments, among others, one in favor of the president, directors, and company of the Bank of St. Louis against the said Moses Austin, and one in favor of Alixander McNair against the said Moses Austin, which judgments are the same between the same parties hereinbefore shewn, a mortgage executed by the said Moses Austin to the said president, directors, and company of the Bank of St. Louis hereinbefore shown, which deed was duly recorded in the recorder's office in the county of Washington aforesaid on the twenty-ninth day of February, in same year.

And your orator further sheweth that the said deed executed by the said Moses Austin to the said James Bryan was without any consideration, and, if any, it was made as security for a debt due from said Austin to him.

And your orator further sheweth that the claim and interest of the said James Bryan to the said land was the said deed executed by the said Moses Austin to him as aforesaid, was a defensible interest.

And your orator further showeth that the said James Bryan departed this life intestate on or about the ninth day of July, in the year one thousand eight hundred and twenty-two, at the county of Jefferson, in the State of Missouri, leaving in full life his widow, Emily Bryan, & the following children, to wit, William Bryan, Moses Bryan, Guy Bryan, and Mary Bryan, his heirs at law; that the said Emily, his widow, intermar- 254 ried with James J. Perry, at the county of Washington aforesaid, on or about the first day of October, in the year one thousand eight hundred and twenty-four; that the said Mary Bryan died intestate on or about the first day of October, in the year one thousand eight hundred and thirty-four, at Texas, in the Republic of Mexico, without issue and unmarried, leaving in full life her mother, Emily Perry, aforesaid, and her full brothers, William, Moses, and Guy Bryan aforesaid, and a half brother, Stephen Perry, and a half sister, Eliza Perry, and, as he verily believed, another half brother or sister whose name he cannot insert herein, because it is to your orator unknown, on her mother's side, born of the intermarriage between the said Emily Bryan and the said James J. Perry, her heir at law, so far as his knowledge extends; that the said James J. Perry and Emily, his wife, and the said William Bryan, Moses and Guy Bryan, Stephen Perry and Eliza Perry, the child whose name is unknown, and the said Emily Perry, whose your orator prays may be defendants to this bill, are without the jurisdiction of the court and non-residen tof this State, and are residing in the State of Texas aforesaid, and that the said Emily Perry is entitled to one-third during her life and to two-elevenths of one-fourth in fee, and the said William, Moses, and Guy Bryan each to one-fourth and to two-elevenths of one-fourth in fee, and the said Stephen and Eliza Berry and the child, whose name is unknown, of the said 255 Emily Perry each to one-eleventh of one-fourth in fee of one said undivided moiety of said tract of land under the conveyance aforesaid executed by the said Moses Austin to the said James Bryan, and that the said William, Moses, and Guy Bryan, and the said Stephen and Eliza

Perry, and the child, whose name is unknown, of the said Emily Perry, are infants under the age twenty-one years.

And your orator further sheweth that the tract of land, the undivided half thereof, conveyed as aforesaid by the said Moses Austin to the said James Bryan, is the same with the tract of land sold as aforesaid at sheriff's sale to Charles R. Ross, and includes the six hundred and forty acres mortgaged as aforesaid by the said Moses Austin to said president, directors and company of the Bank of St. Louis, and that the tract of land known as the Mine à Breton survey is situate in the county of Washington and State of Missouri. But, more, so it is the said James F. Perry and Emily, his wife, and the said William Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and the child, whose name is unknown, of the said Emily Perry, do absolutely refuse to convey to your orator the said undivided half of said tract of land the title whereof is at law vested in the aforesaid, for reason whereof they sometime allege and pretend that the said James Bryan was a purchaser of the same for a valuable consideration, and with notice of any lien or incumbrance on the same, and that
the purchase was made by the said James Bryan absolutely with-
256 out any reservation or defeasance; whereas your orator charges that
the conveyance from the said Moses Austin to the said James
Bryan was with the express understanding that the said James Bryan took the said land so conveyed to him at his own risk and hazzard against certain judgments and mortgage, that is to say, against the following judgment among others: one in favor of the president, directors, and company of the Bank of St. Louis against the said Moses Austin, and one in favor of Alexander McNair against the said Moses Austin, which judgments are the same between the same partie' hereinafter shown, and a mortgage executed by the said Moses Austin to the said president, directors, and company of the Bank of St. Louis hereinbefore shewn; and your orator expressly alleges and charges that he is the representative under the conveyance hereinbefore thereon of the president, directors, and company of the Bank of St. Louis, who were the purchasers of the said land at the sheriff's rule under said judgments as and the mortgage aforesaid, by reason whereof he is equitably entitled to said undivided moiety of said against the said James Bryan, the defendants herein, who claim the same as aforesaid under the said James Bryan; and your orator further charges that the said James Bryan was not a purchaser for valuable consideration; that at the time of the conveyance to him aforesaid by the
257 said Moses Austin he had notice of judgments & mortgages aforesaid,
took the said conveyance expressly subject to said judgement
mortgages, & that the said executions aforesaid by the said Moses Austin to the said James Bryan, was made with some secret understanding between the said Austin & Bryan to delay, hinder, & defraud the creditors of the said Austin, or in some other way to benefit the said Austin & family & to the prejudice of the creditors of the said Austin, and that there was some secrete understanding between the said Austin & Bryan growing out of, related to, & connected with the said conveyances by the said Austin to the said Bryan, who was the son-in-law of the said Anstin. All which acting, *futones*, & doings of the said James Bryan & the defendants to this bill are contrary to equity & good conscience & *two* the manifest *inquiry* & *operation* of your orator.

In *how* consideration whereof, & for that your orator remediless in the premises by the strict rules of the common law, and relievable only in court of equity, where matters of this relation are properly cognizable to the land thereof, that the said James F. Perry, & Emily, his wife, Wm. Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and the child, whose name is unknown, of the said Emily Perry, may further direct & perfect answer make on their corporal oaths according to the
258 best of their knowledge, information, and belief to all singular
the charges & matters aforesaid, as fully in every respect as if the same was here again repeated to them herewith particularly interrogated; and that the said James F. Perry & Emily, his wife, and the said Wm. Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and the child whose name is unknown, of the said Emily Perry, may be compelled by a decree of this court to answer to your orator all right, title, and interest they each of them may have in the said undivided moiety of the tract of land aforesaid, or that the right and interest of the said James Bryan at the time of his death, and of the said James F. Perry & Emily, his wife, in her right, & of the said Wm. Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry and the child whose name is unknown, of the said Emily Perry, *into* the said undivided moiety of the said tract of land conveyed by said Moses Austin by his deed, executed this fifteenth day of Feb., in the year one thousand eight hundred and twenty, to said James Bryan as aforesaid, be vested in your orator, and for such other and further relief as to this court shall seem just, and that this court will to your orator such order in the premises against the said defendants herein as to this court shall seem according to law; & in duty, &c.

JOHN DEAM,
Complainant.
BEVERLY ALLEN,
His Solicitor.

259 STATE OF MISSOURI,
County of Washington:

Personally appeared John Deam, complainant *and* in the foregoing bill of complaint, and made oath that the allegation in said bill contained of an answer of the child, whose name is alleged therein to be unknown to him, of Emily Perry, one of the defendants therein, & the interest of such child is the subject-matter of such bill, upon same order, are true; and the said John Deam, further makes oath that James F. Perry & Emily, his wife, Wm. Bryan, & Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, & the child, whose name is unknown, of the said Emily Perry, defendants in said bill, are non-residents of the State of Missouri, as he is informed and verily believes.

JOHN DEAM.

Sworn to subscribed before me, the undersigned, clerk of the circuit court of the county of Washington, Missouri, at office, this first day of April, A. D. 1836.

J. McGREADY, *Clerk.*

(Endorsements:) July term, 1836. John Deam, complainant, vs. James F. Perry, Emily Perry, Wm. Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and a child, whose name is unknown, of said Emily Perry, defendants.

On this bill & affidavit the clerk will make an order of publication, pursuant to the statute.

B. ALLEN, *Solicitor*.

To clerk of the court, Washington Co.
Filed April 1st, 1836. J. McGready, clerk.

260 STATE OF MISSOURI,
County of Washington, ss:

I, Andred F. Casey, clerk circuit court within and for the county & State aforesaid, *as* hereby certify that the foregoing is a true copy of the original petition in the cause therein stated as fully as the same remains on file in my office.

Witness my hand as clerk and the seal of said court affixed, at office in Potosi, this 19th day of September, A. D. 1877.

ANDREW F. CASEY, *Clerk*.

261 STATE OF MISSOURI,
Washington County:

At a circuit court sitting as a court of chancery, began and held at the court-house in the town of Potosi, in and for said county, on the fourth Monday of July, in the year of our Lord one thousand eight hundred and thirty six, it being the twenty-fifth day of said month, were present the honorable William Scott, judge, William W. Smith, sheriff, & Isreal McGready, clerk.

TUESDAY, *July 26th*, 1836.

JOHN DEAN, COMPLAINANT,
vs.
JAMES F. PERRY & EMILY, HIS WIFE, William Bryan, MosesBryan, Guy Bryan, Stephen Perry, and Eliza Perry, and a child, whose name is unknown, of the said Emily Perry, defendants.
} In chancery.

And now at this day comes the said John Dean, the complainant, and makes proof that the order heretofore made in this cause by the clerk of this court in vacation has been duly published in the Missouri Republican, a newspaper printed in the city of St. Louis, in this State. The court appoint John Brickey guardean of William Bryan, Moses Bryan, 262 Guy Bryan, Stephen Perry, Eliza Perry, and a child, whose name is unknown, of the said Emily Perry, infant, defendants herein, to defend this suit, who, here in court, consent to act as such.

JULY 27TH, 1836.

JOHN DEAN, COMPLAINANT,
vs.
JAMES F. PERRY AND EMILY, HIS WIFE, others, infant heirs of said defendants.
} In chancery.

And now on this day comes the said William Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and the said child, whose name is unknown, of the said Emily Perry, infant defendants, by their guardean, John Brickey, and file their answer; and the said James F. Perry

and Emily, his wife, having been notified to appear at this term, according to law, and answer the *bale* of the said complainant, or the same would be taken as confessed, and having failed to file any exceptions, plea, demurrer, or answer to the bill, it is ordered that the same be taken as confessed against the said James F. Perry and Emily, his wife; and it is further ordered, adjudged, and decreed that the right and interest of the said James F. Perry and Emily, his wife, in his right in and to the said *individual* moiety of that certain tract of land situate in the county of Washington, in this State, heretofore granted to Moses Austin by the Spanish Government and confirmed to him by the Government of
263 the United States, containing seven thousand one hundred and sixty arpens, and being one league square, situate at and near the Mine à Breton, in the county of Washington, excepting such parts thereof as the said Moses Austin had, prior to the fifteenth day of February, in the year one thousand eight hundred & twenty, sold and conveyed, and which parcels so excepted are, fourteen hundred and thirty-two arpens to John Rice Jones, forty five arpens to the county of Washington, two hundred & sixteen arpens to a Mrs. Perry, two hundred & forty-three arpens to a Mr. Ruggles, fifty-eight arpens to a Mr. McGready, four arpens to John Brickey, sen'r, three hundred and twenty-five arpens to Mr. Ficklin, forty-five arpens to Mr. McCormick, one hundred & sixteen arpens to Mr. Brock, and are described in the deeds and contracts to said purchasers for the same, being the moiety conveyed, as charged in the bill of complaint, by Moses Austin to James Bryan, by his deed dated the fifteenth day of February, in the year one thousand eight hundred & twenty, be vested in the said John Dean, the complainant, unless the said James F. Perry & Emily, his wife, appear at the next term of this court & file their answer to said bill; and it is further ordered this cause continued.

264 WEDNESDAY, *July 27th*, 1836.

The circuit court, sitting as a court of chancery, adjourned till court in course.

STATE OF MISSOURI,
Washington County:

At a circuit court, sitting as a court of chancery, began and held at the court-house, in the town of Potosi, in and for said county, *in* the fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-six, it being the twenty-eighth day of said month, was present the honorable William Scott, judge, A. C. Hinkson, sheriff, Isreal McGready, clerk.

WEDNESDAY, *November 30th*, 1836.

JOHN DEAN, COMPLAINANT,
vs.
JAMES F. PERRY & EMILY, HIS WIFE, AND others, infant heirs of the said Emily, defendants.

Decree.

And now at this day comes the said John Dean, the complainant, by his solicitor, and the said William Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and a child, whose name is unknown, of the said Emily Bryan, defendants, by their guardean, John Brickey, & 265 by agreement of the parties aforesaid it is consented that the bill be taken in lieu of allegations, and thereupon, neither party requiring a jury, all and singular the premises are submitted to the court, who doth find that the matters aforesaid, in form aforesaid in the bill alleged, are true; and the said James F. Perry and Emily, his wife, having failed to appear at this term of the court and file their answer to the bill of complaint, it is ordered and adjudged and decreed that the decree heretofore entered in this cause against them be, and the same is hereby, made final.

And it is further ordered, adjudged, and decreed that the right, title, and interest of the said William Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and a child, whose name is unknown, of the said Emily Bryan, defendants, in and to the undivided moiety of that certain tract of land situate in the county of Washington, in this State, heretofore granted to Moses Austin by the Spanish Government, and confirmed to him by the Government of the United States, containing seven thousand one hundred and sixty arpens, and being one league square, situate at and near the Mine à Breton in the county of Washington, excepting such parcels thereof as the said Moses Austin had prior to the fifteenth day of February, in the year one thousand eight hundred and twenty, sold and conveyed, and which parcels so excepted are, fourteen hundred and thirty-two arpens to John Rice Jones, forty-five arpens to the county of Washington, two hundred and sixteen arpens to a Mr. 266 Perry, two hundred and forty-three arpens to a Mr. Ruggles, fifty-eight arpens, to a Mr. McGready, four arpens, to John Brickey, sen'r, three hundred & twenty-four arpens to Mr. Ficklin, forty-five arpens to Mr. M'Cormick, one hundred and sixteen arpens, to Mr Brocky, and are described in the deeds & contracts to said purchasers for the same; being the moiety conveyed as charged in the bill of complaint by Moses Austin to James Bryan, by his deed dated the fifteenth day of February, in the year one thousand eight hundred and twenty, be vested in the said John Dean, the complainant.

And it 's further ordered, adjudged, and decreed that the said defendants recover of the said complainant, John Dean, the costs & charges in this behalf expended.

And it is further ordered, adjudged, and decreed that the said William Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and a child, whose name is unknown, of the said Emily Bryan, respectively, be allowed each the time of six months after he or she respectively comes of age to appear and show cause against this decree entered as aforesaid against them.

267 STATE OF MISSOURI,
County of Washington, ss:

I, Andrew F. Casey, cl'rk of the circuit court in and for said county, do hereby certify that the above is a true copy of the original orders and decrees in the cause therein named, as the same appears of record in chancery record in my office.

Witness my hand as clerk, and the seal of said court.

Done at office, in Potosi, this 18th day of September, 1877.

[SEAL.] ANDREW F. CASEY, *Clerk.*

(To which plaintiff objected, because it appeared by the recitals in the bill that the sheriff's deed, the origin of title, was void for want of a seal or scrawl by the sheriff, and therefore Deane had no right to bring such a bill, having no title, and being in possession merely as a trespasser, and that by further recitals it appeared that the bill was taken as confessed against minors, and that judgment was entered against them without any proof being offered before the court, and was therefore void. These objections were overruled, to which the plaintiff then and there excepted.)

268 *Bill of equity of John Deane vs. William Milam, & agreement of arbitration, & award, &c.*

Certified copy of bill in equity of John Deane vs. William Milam, and agreement of arbitration and award of arbitrators, as follows:

The award, arbitrament, & final determination of Edward Bates, an are bitrator indefferently chosen by John Deane & William Milam.

The said John Deane & William Milam, having submitted to the award, arbitrament, and final determination of the said Edward Bates the matter in defference between them, by a written article of agreement under their hands & seals, which is in the words and figures following, to wit:

We, the undersigned, having claims to the tract of land in Washington County, Missouri, adjoining the town of Potose, which was originally granted to Moses Austin, and contained the quantity of a league square, and in power as the Mine à Breton survey, and being desirous to any dispute in relation to our said claims without litigation, do hereby refer and submit all our claims in relation to said tract of land to the award, arbitrament, and final determination of Edward Bates, to be by him fully and finally decided. And we do hereby covenant and bind ourselves, each to the other, to abide by, perform, fulfill and keep the award, arbitrament, and final determination of said Edward Bates upon our said
269 claims to said tract of land.

In testimony whereof we have hereunto set our hands and seals this eleventh day of February, 1839.

JOHN DEANE. [SEAL.]
WILLIAM MILAM. [SEAL.]

Witness:
James M. White.

There were exhibited to me, as such arbitrator, all the claims of the said John Deane and William Milam, respectively, in relation to the said tract of land, with the deeds & various other documents under which each party asserts his claims, and also a copy of the bill exhibited in chancery & now pending in the circuit court of the United States for the Missouri district, by the said Deane, against the said Milam, in regard to the same subject-matter, and Milam's answer to the said bill, with various depositions & testimony taken in said suit. And the counsel of both parties, viz, Messrs. Spaulding & Allen for Deane, & Mr. Gamble for Mr. Milam, having submitted their briefs & arguments in support of the claims of their respective clients, I have carefully considered & deliberated upon the whole matter, and my mind has come to the following conclusions upon points which seem to me to govern the case:

1. In the proceedings neither party can dispute the right of Risdon H. Price to the land in question, as claimed by him under the deed from Charles R. Ross, bearing date 21st December, 1820, as both of them claim under that deed. It is, therefore, not necessary to scrutinize the
270 title beyond that deed except as is hereinafter particularly stated.

2. Price having become responsible to the Bank of Edwardsville for a debt of $10,000, due from the Bank of St. Louis, & having received a conveyance of said land from Ross for that consideration only, by his deed of trust of April 7th, 1821, conveyed the same to Stephenson, McKenney, & Smith, to receive to the Bank of Edwardsville the payment of said debt, with interest, in the manner therein specified. This deed was not properly acknowledged & recorded, but upon the whole case I am satisfied that Milam is justly chargeable with notice thereof at the time that Price conveyed to him the same land, by deed bearing date June 20th, 1828; so—

3. The said tract of land was vested in said trustees, & their deed to Devotion of the trust, dated 29th of June, 1822, for the sum of $9,000, would have vested in him the title irredeemably; but—

4. The articles of agreement between Price & Devotion, dated June 8th, 1822, gave to Price the right to redeem.

5. The interest of Devotion in the land, though redeemable by Price, was not a mortgage nor other mere security for a debt, but a fee-simple estate capable of sale or descent; and so, after the death of Devotion, it might lawfully be sold by his administrator, under the order of the court.

6. The deed from Savage, administrator of Devotion, to Deane,
271 bearing date May 26th, 1835, vested in Deane the same title that Devotion had in his life-time, & subject to the same redemption.

7. Deane, by acquiring Bryan's title, got nothing available to him in this proceedings, because that title on the fall of the deed is postponed to the debt, one from Moses Austin to the Bank of St. Louis, & that debt is not even yet fully paid ,& not paid at all, except by a transfer of the land.

8. Milam took no interest in the land by his deed from John Smith, T., dated 13th July, 1832, because when Smith purchased under execution against the Bank of St. Louis the bank had no interest in the land subject to sale on execution.

9. Under the deed from Price to Melam, bearing date June 20th, 1828, Melam acquired the right to redeem the land, as Price might have redeemed it in virtue of the articles of agreement between them & Devotion, above referred to, & nothing more.

10. The interest in the land of Levi and Rufus Pettibone, as conveyed to them by Moses Austin's deed to them & James Bryan, *Bryan* bearing date February 15th, 1820, originally stood on no better footing than the claim of Bryan, as mentioned above in clause 7; but—

11. By the agreement of L. & R. Pettibone with the Bank of St. Louis, & the consequence resolution of the bank of the date of the 11th of March, 1820, the claim of the Pettybones was put upon the same footing with
272 the claim of the bank; both were to be paid out of the land pro rata.

12. Melam; in virtue of the decree of the circuit court of St. Louis County, of date of 2nd of April, 1830, & of the two deeds of conveyance of Levi Pettibone, the one of the 10th of November, 1829, the other of the 13th of January, 1834, is vested with all the right and claim to the land which Rufus & Levi Pettibone had, which is the right to be paid out of

the land pro rata with Deane's claim, one thousand dollars, with interest at six per cent. per annum thereon from the 11th day of March, 1820, the date of the resolution of the Bank of St. Louis, above referred to in clause 11.

13. And Deane has the right to be paid out of the land pro rata with Melam, nine thousand dollars, with interest therein at the rate of six per cent. per annum from the 29th day of June, 1822, the date of the deed of conveyance of the land from Stephenson, McKinney, & Smith, trustees of the Bank of Edwardsville, to Devotion.

14. Milam, in virtue of the deed of conveyance of the land from Price to him, of the 20th June, 1828, is entitled to redeem the land from Deane by paying him nine thousand dollars, with interest from the 29th day of J , 1822, as stated in the last clause.

15. No testimony has been offered sufficient to enable me to form a satisfactory opinion as to the value of the land or the amount of the annual issues, rents, & profits thereof. I have reason, however, to believe that
273 the issues have been very small since the land came to the possession
of Mr. Milam, and therefore I shall take no account of them in deciding upon the case.

Having concluded upon the foregoing points, I do award, arbitrate, and finally determine all the claims of the said John Deane & William Milam, in relation to said tract of land mentioned in the said article of submission hereinbefore set forth, and do make the same known to the parties in manner following:

First. The chancery suit now pending in the circuit court of the United States for the Missouri district, in which the said John Diane is complainant and the said William Melam is defendant, shall be dismissed without any other proceeding in court and each of the parties shall pay his own costs.

Second. The said tract of land known as Mine à Breton survey, mentioned in the article of submission above set forth, and as the said tract is more particularly described in the deed of conveyance thereof from Charles R. Ross to Risdon H. Price, dated 21st of December, 1820, shall be sold by public outcry to the highest bidder for ready money, at the court-house door in the county of Washington, in the first day of the October term of the circuit court of said county, between the hours of ten o'clock in the morning, and three o'clock in the afternoon of that day. The sale
274 shall be conducted & made by the said John Deane and William
Milam in person, or by agent, and they shall give at least twenty days' previous public notice of the time, place, & terms of the sale. They shall receive the purchase-money & shall jointly make a deed whereby they shall convey to the purchaser all their rights, titles, interests, & claims in & to the said tract of land; and the purchase-money shall be divided between the said John Deane & William Milam, in proportion to their respective money claims in relation to the said tract of land; that is to say, John Deane's money is as I do hereby award & determine the same to be, nine thousand dollars, with interest at the rate of six per centum per annum, from the 29th day of June, 1822; and William Milam's claim is as I do hereby award and determine the same to be, one thousand dollars, with interest thereon at the rate of six per centum per annum, from the 11th day of March, 1820. And the money so apportioned to & received by

them respectively shall be in full satisfaction & discharge of all their claims in relation to the said tract of land.

Third. And I do further award, arbitrate, & determine that the said William Milam may at any time before the day appointed for the sale of the said tract of land, as above awarded, redeem the said tract of land by paying to the said John Deane the sum of nine thousand dollars, with interest thereon at the rate of six per centum per annum from the 29th
275 day of June, 1822. And in that case the sale shall not be made,
but the said John Deane shall immediately upon the receipt of the money make a deed whereby he shall convey to the said Milam all his, the said Deane, right, title, interest, & claim in, or in relation to the said tract of land.

In testimony whereof I have executed this instrument in duplicate, both of which are original, and to be delivered to each party.

Done under my hand & seal at New Trial, St. Charles County, June 15th, 1841.

EDW. BATES. [SEAL.]

We, the undersigned, are fully satisfied with the foregoing award, and hereby bind ourselves, our heirs, executors, and administrators, to abide by the said award and carry the same into full and complete effect, according to the letter and spirit of the same. Witness our hands and seals this 26th day June, 1841.

WM. MILAM. [SEAL.]
JOHN DEANE. [SEAL.]

Witness:
W. FRISSELL.

(Objected to by plaintiffs as immaterial & irrelevant, and objection overruled, and plaintiff excepts.)

276 *Certified copy of deed of William Milam to John Deane.*

Certified copy of deed of William Milam to John Deane, as follows:

Whereas William Milam and John Deane, being both claimants of a tract of land lying in Washington County, Missouri, known as the Mine à Breton tract, submitted their respective claims to the arbitration of Edward Bates, esq., and the said Bates, on the fifteenth day of June last past rendered his award in respect thereof, which award, with the assent thereto of said Milam & Deane, under their respective hands and seals, is hereto annexed, and is a part of this deed; and whereas in pursuance of said award the said Milam and Deane did give public notice of the time, place, and terms of sale of the said property by printed advertisements, signed by them, a copy whereof is hereto annexed as a part of this deed, which advertisements were put up at at least seven of the most public places of the said county of Washington, and also were printed in the New Era, a newspaper published in the city of St. Louis, more than twenty days before the day of sale therein named; and whereas afterwards, on the first day of the October term of the circuit court of said county of Washington, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of that day, at the court-house door in said county, the said tract of land in said award and said advertisements mentioned, was, by the said

Milam and Deane, publicly exposed and offered for sale by public
277 outcry to the highest bidder, and the said John Deane was then and there the highest and last bidder therefor, at the price and sum of eighteen thousand six hundred dollars, and the same was then and there stricken off and sold to him for that sum; and whereas I, the said Milam, have received from the said Diane the portion of said bid coming to me under the said award, to wit, the sum of one thousand nine hundred sixty-six and $\frac{15}{100}$ dollars, and the said *deed* is *i*ntitled to receive from me a conveyance of all my right, title, interest, and claim in and to the said tract of land:

Now, therefore, in consideration of the premises, and of the said sum of money so paid to me by said Deanes as aforesaid, I, the said William Milam, do hereby sell, alien, enfeoff, convey, release, and confirm unto the said Deane all my right, title, interest, and claim in and to the tract of land above mentioned, being in said Washington County, on Mine Creek, adjoining the vill*i*age of Mine à Breton, being one league square, formerly belonging to Moses Austin, by grant from the Spanish Government, with the exceptions and reservation as follows, viz: of one lot to Israel McGready, containing two acres and thirteen poles; one lot of twelve acres to John Brickey, and one lot of one acre to Israel Brickey, which lots are more particularly described in the annexed advertisement; also the lots deeded by me for the Presbyterian and Baptist churches and the burying ground adjoining the lot on which the Presbyterian church
278 stands; also a narrow strip of land between the lot on which Dr. Israel McGready's dwelling stands and Breton street.

Also all my interest in the handerchief tract, so called, which is a part of said Moses Austin grant; to have and hold all my right, title, interest, and claim in and to said tract of land of a league square, with the exceptions aforesaid, unto him the said John Deane, and to his heirs and assigns, forever; and I do covenant for myself, my heirs, and representatives, with said Deane and his heirs and assigns, that I have not conveyed away said tract or incumbered it, or any part of it, with the exceptions and reservations aforesaid, and I will warrant and defend the same against all acts of mine in the premises except such as are specified above.

In testimony whereof I have hereunto affixed my hand and seal this eighth day of November, in the year of our Lord one thousand eight hundred and forty-one, at Potosi, Washington County, Missouri.

WILL. MILAM. [SEAL.]

STATE OF MISSOURI,
Washington County, ss:

Be it remembered that on this eighth day of November, in the year of our Lord one thousand eight hundred and forty-one, undersigned, clerk of the circuit court in and for the county and State aforesaid, personally appeared William Milam, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as having executed the same, and acknowledged the same to be his act and
279 deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at office in Potosi, this 8th day of Nov'r, 1841.

[SEAL.] ISRAEL McGREADY, *Clerk.*

STATE OF MISSOURI,
Washington County, ss:

I, Israel McGready, clerk of the circuit court and ex officio recorder in and for said county, do certify that the foregoing award, notice of sale, and deed were filed for record in my office Nov. 9th, 1841, and that they are truly recorded in book E, from page 163 to 170, and the same remain of record in my office.

In testimony whereof I have hereto set my hand & seal of office at Potosi.

[SEAL.]
ISRAEL McGREADY, *Clerk.*
By W. E. McGREADY, *Dep.*

Filed Nov. 9th, 1841. I. McGready, rec'*d*.

280 *Deposition of Levi Pettibone.*

Defendants offer the deposition of Levi Pettibone.

NOTICE TO TAKE DEPOSITIONS.

In the circuit court of the United States for the eastern district of Missouri.

WILLIAM J. BRYAN ET AL., PLAINTIFFS,
vs.
FERD. B. KENNETT ET AL., DEFENDANTS.

To the above-named pl'ffs or their att'y*s*, D. F. Jewett, esq.:

You are hereby notified that depositions of witnesses, to be read in evidence in the above-entitled cause on the part of the defendants, will be taken at the residence of Hon. Levi Pettibone, in the town of Louisiana, in the county of Pike and State of Missouri, on the twenty-second day of March, 1878, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day at the same place and between the same hours, until completed.

DONOVAN & CONROY,
Att'ys for Def'ts.

Service of the above notice is hereby acknowledged, and issues of *d*idimus and all exceptions as to time waived.

March 12th, 1878.

Att'y for Pl'ff.

281 In the circuit court of the United States for the eastern district of Missouri.

WILLIAM J. BRYAN ET AL.
vs.
FERD. B. KENNETT ET AL.

Deposition of Levi Pettibone, a witness produced, sworn, cautioned, and examined on the 22d day of March, A. D. 1878, between the hours of

8 o'clock a. m. and 6 o'clock p. m., at the residence of Hon. Levi Pettibone, in the town of Louisiana, in the county of Pike and State of Missouri, before me, a notary public within and for said county, in a certain cause now depending in the circuit court of the United States in and for the eastern district of Missouri between the above-named parties, plaintiffs and defendants:

LEVI PETTIBONE, of lawful age, being produced, sworn, cautioned, and examined on the part of the defendants, deposeth and saith:

Q. 1. State your name, age, residence, and occupation.

Ans. 1. My name is Levi Pettibone; I am in my ninety-eighth year; I was born in December, 1780. I reside at Louisiana, in the State of Missouri. I am not engaged at present in any business.

Q. 2. Were you acquainted with Moses Austin in his lifetime?

A. 2. I knew him by sight; was introduced to him and spoke to him, and swore him frequently in my brother's office, and had business transactions with him. My brother's name was Rufus Pettibone.

Q. 3. What business transactions had you with him?

282 My business transactions with him were carried on chiefly with my brother, who was his attorney. I furnished for the use of Austin the money to purchase the Shaw tract of six hundred and forty acres in Washington County, Missouri, for which I got a deed dated the fifteenth day of February, 1820, executed by Moses Austin and conveying to Levi Pettibone and Rufus Pettibone and James Bryan a tract of 640 acres of land in Washington County, known as Shaw tract, and situated about two miles from the villiage of Potosi, and of which I have possession of the original deed, which I hereto attach to my deposition and marked "Exhibit A." I advanced on this property about three hundred dollars. My brother may have paid some money on this transaction. Bryan paid his share, I suppose. I know that Bryan and others were pretty busy at that time getting money for Austin. Austin seemed to be in trouble about that time, and this money was given as consideration for the purchase-money of the Shaw tract. I think the total amount was one thousand and four hundred dollars. That money was paid to Mr. Elias Bates, as I believe. Mr. Bates was helping Mr. Austin at that time, and I believe had liens on his property. He executed to James Bryan, my brother, and myself a deed dated the 15th day of February, 1820, conveying to us the Shaw tract and confirming, as I
283 understood it, the deed made by Moses Austin and above mentioned
as Exhibit A. I attach hereto said deed of Elias Bates, and make the same a part of this deposition, and mark the same as "Exhibit B." I had no other transactions with Moses Austin concerning my land in Washington County, Missouri, to my knowledge. I never purchased any interest in the Moses Austin claim in Washington County. All the interest I had prior to 1829 was in the Shaw tract.

Q. 4. State what, if anything, you know concerning a deed dated the 15th day of February, 1820, signed by Moses Austin and wife, and purporting to convey to you and Rufus Pettibone, and also to James Bryan, in consideration of twenty-one thousand dollars, a tract of land granted to Moses Austin, by the Spanish Government, containing seven thousand one hundred and sixty aspens more or less, situated near the Mine à Breton, in the county of Washington, in the then Territory of Missouri.

A. 4. I had and have no personal knowledge of that transaction. I do know that my brother had a claim against Moses Austin, upon which he subsequently got judgment against Austin. This land was, I suppose, conveyed to my brother, myself, and Mr. Bryan, as security for that debt. My brother had a right to use my name in the transaction. I do not know whether my brother's claim was prior or subsequent to the 284 claim of the Bank of St. Louis. I think my brother's claim was about one thousand dollars. The amount of the bank's claim was about fifteen thousand dollars. By an agreement between the bank and my brother both claims were put on the same footing. I have that agreement, and hereto attach same as part of this deposition, and the same is marked "Exhihit C." My brother, Rufus Pettibone, died on the 31st day of July, 1825. I became his administrator, and sold to pay debts his interest in this claim. I purchased at that sale and received from the judges of the county court of St. Charles County a deed conveying that interest to me. I subsequently had the property sold, and got my money from William Milam. I never paid Moses Austin twenty-one thousand dollars mentioned in that deed, or any other sum. The only claim, as far as I knew, which that deed was intended to secure was my father's claim. My brother's claim was mostly for attorney's fees, and has been fully paid. It was paid in 1829 or 1830. I think the date of payment was December 17th, 1829. I am led to believe that was the date from a receipt signed b*uy* my attorney, Mr. Joseph Spaulding, of that date.

Q. 5. Do you know when Moses Austin went into possession of what is describied above as the Austin claim?

A. 5. His grant was from the Spanish Government in 1797, and 285 he went into possession under that grant. I suppose he went into possession at once. He was one of the earliest settlers there. He always stated that.

Q. 6. Do you know how long he continued in possession?

A. 6. I cannot say; I left St. Louis in the latter part of 1820.

Q. 7. Have you ever been in possession of the Moses Austin tract?

A. 7. I have been in possession of the land, or expressed my act of ownership over it. Risdon H. Price, under some arrangement with the Bank of St. Louis and Austin (Price being the president of the bank), was in possession since about April 27th, 1821. I am speaking according to my best recollection; it was somewhere about that time.

Q. 8. Was Bryan or your brother ever in possession of the Moses Austin tract?

A. 8. Not to my knowledge.

Q. 9. Have you ever paid any taxes on the Moses Austin tract?

A. 9. I have not.

Q. 10. Has your brother or Mr. Bryan, or any one for them, or either of them, ever paid any taxes on the Moses Austin tract?

A. 10. Not to my knowledge.

Q. 11. What did you say the deed conveying to you what was known as the Moses Austin claim was given for?

A. 11. It was given to secure a debt due by Moses Austin to my 286 brother, which debt was fully paid in 1829.

LEVI PETTIBONE.

Subscribed and sworn to before me this 22d of March, 1878. Witness my hand and notarial seal, at Louisiana. My notarial commission expires May 18, 1878, and I was qualified thereto June 8, 1874.

[SEAL.] S. A. DRAPER,
Notary Public, Pike Co., Mo.

STATE OF MISSOURI,
County of Pike, Eastern District of Mo.:

I, Susie A. Draper, a notary public within and for the county of Pike, in the State of Missouri, do certify that in pursuance of the within notice, *came* before me, at the residence of Hon. Levi Pettibone, in the town of Louisiana, in the county of Pike, in the State of Missouri, and within said eastern district of Missouri, came said Levi Pettibone, who was by me cautioned and sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was by me carefully examined, and his examination reduced to writing, and subscribed by him in my presence, on the 22d day of March, 1878, between the hours at the time and place in said notice set forth.

I further certify that the papers marked respectively Exhibits A, B, and C were by said witness produced and made part of his said
287 deposition herein, and are herewith returned as part of said deposition.

I further certify that said witness resides in said town of Louisiana, in said eastern district of Missouri; that I am a notary public duly qualified June 8th, 1874, for a term ending May 18th, 1878; that I am not attorney or of counsel for either of the parties, or interested in the event of the above-entitled cause. In testimony whereof I have hereunto set my hand and affixed my official seal this 22d day of March, 1878.

[SEAL.] S. A. DRAPER,
Notary Public, Pike County, Mo.

EXHIBIT A.—S. A. DRAPER, *Notary Public.*

This deed, made the fifteenth day of February, in the year of our Lord one thousand eight hundred and twenty, between Moses Austin, of Herculaneum, in the county of Jefferson and Territory of Missouri, & Mary Austin, his wife, of the one part, and James Bryan, of the county of St. Genevieve, in said Territory, and Levi Pettibone and Rufus Pettibone, both of St. Louis, in said Territory, of the other part, witnesseth:

That the said Moses Austin and Mary Austin, for and in consideration of one dollar to them in hand paid, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, transferred, and quitclaimed, and do hereby sell, transfer, and quitclaim, all their
288 right and title to a certain piece or parcel of land, containing six hundred and forty acres, situated in the county of Washington and Territory of Missouri, and is the same tract of land heretofore granted by the Spanish Government to Darius Shaw and confirmed to him by the Government of the United States, and is commonly known by the name of the Shaw tract, situated one or two miles from the village of Potosi, on the road to St. Genevieve, to have and to hold the said six hundred and forty acres of land as tenants in common, the said James Bryan an undivided

half and the said Levi Pettibone and Rufus Pettibone an undivided fourth part each, together with the privileges and appurtenances thereunto belonging, to them, the said James Bryan, Levi Pettibone, and Rufus Pettibone, their heirs and assigns forever, to the sole and only proper use, benefit, and behoof of them, the said James Bryan, Levi Pettibone, and Rufus Pettibone, their heirs and assigns forever.

In testimony whereof we have hereunto set our hands and seals the day and year first above written.

MOSES AUSTIN. [SEAL.]
MARY AUSTIN. [SEAL.]

Signed, sealed, and delivered in presence of—
SAM. WOODSON.

TERRITORY OF MISSOURI,
Jefferson County, ss:

289 Be it remembered that on this fifteenth day of February, in the year eighteen hundred and twenty, personally appeared before me, the clerk of the circuit court within and for the county of Jefferson, the aforementioned Moses Austin and Mary Austin, his wife, and acknowledged the foregoing deed or instrument of writing to their and each of their acts & deeds, hands and seals, for the purposes therein mentioned; and the said Mary being by me examined separately and apart from her said husband, and being acquainted with the contents, says she executed the same freely & voluntarily, and without the compulsion or undue influence of her husband.

Given under my hand and private seal, having no seal of office, the day and year first aforesaid.

[SEAL.] SAM. WOODSON, *Cl'k.*

WASHINGTON COUNTY, *ss:*

Received for record February the 20th, 1820, & recorded in book A, pages 4, 5, 6, & 7, bearing date March the 1st, 1820.

JOHN BRICKEY, *Recorder.*

290 EXHIBIT B.—S. A. DRAPER, *Notary Public.*

This deed, made this fifteenth day of February, in the year of our Lord one thousand eight hundred and twenty, between Elias Bates, of Herculaneum, in the county of Jefferson and Territory of Missouri, and Ann C. Bates, his wife, of the one part, and James Bryan, of St. Genevieve County, in the , and Levi Pettibone and Rufus Pettibone, both of St. Louis, in the Territory aforesaid, of the other part, witnesseth:

That the said Elias Bates and Ann C. Bates, for and in consideration of one thousand four hundred dollars to them in hand paid by the said James Bryan, Levi Pettibone, and Rufus Pettibone, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said James, Levi, & Rufus, their heirs and assigns, forever, a certain tract of land, containing six hundred and forty acres, situated in the county of Washington, in the Territory of Missouri aforesaid, and is the same tract of land heretofore granted by the Spanish Government to Darius Shaw, and confirmed

to him by the Government of the United States, and is the same tract on which James Austin formerly resided, and was conveyed to me by Moses Austin, as by his deed will more fully appear (the said tract of land
291 situated about one or two miles from the village of Potosi, on the road to St. Genevieve, and is commonly known by the name of the Shaw tract), together with all and singular the rights, privileges, and appartenances thereunto belonging or in any wise appertaining; to have and to hold the said premises, with the rights, privileges, and appartenances, unto them, the said James, Levi, & Rufus, their heirs and assigns, forever, as tenants in common, the said James Bryan to have and to hold an undivided half of the said premises, and the said Levi Pettibone and Rufus Pettibone to have and to hold an undivided fourth part each of the said premises, and to the sole and only proper use, benefit, and behoof of the said James Bryan, Levi Pettibone, and Rufus Pettibone, their heirs and assigns, forever. But the said Elias Bates does not mean to warrant the title to the said premises generally, but it is his intention merely to convey all the right and title which was conveyed to him by the said Moses Austin, quitclaiming his right to the said premises and convenantying that he hath in nowise incumbered the said premises, nor hath he heretofore sold the same or done any act whatever to impair *to* the title to the said premises. In testimony whereof the said Elias Bates and Ann C. Bates have hereunto set their hands and seals the day and year first above written.

ELIAS BATES. [SEAL.]
ANN C. BATES. [SEAL.]

Signed, sealed, and delivered in presence of—
SAM. WOODSON.

292 TERRITORY OF MISSOURI,
County of Jefferson:

This day personally appeared before me, the clerk of the circuit court within and for the county of Jefferson, the aforementioned Elias Bates and Ann C. Bates, his wife, and acknowledged the foregoing deed or instrument of writing to be their and each of their acts and deeds, hands and seals, for the purposes therein mentioned; and the said Ann C. being by me examined separately and apart from her said husband, and being acquainted with the contents thereof, says she executed the same freely & voluntarily, without the compulsion or undue influence of her husband.

Given under my hand and private seal, having no seal of office, this fifteenth day of February, eighteen hundred & twenty.

[SEAL.] SAM. WOODSON, *Clerk.*

COUNTY OF WASHINGTON, *ss:*

Received for record February 26th, 1820, & recorded in book A, pages 4, 5, 7, & 8, bearing date March the 1st, 1820.

JOHN BRICKEY,
Recorder.

293 EXHIBIT C.—S. A. DRAPER, *Notary Public.*

BANK OF ST. LOUIS, 11*th March*, 1820.

Whereas at the last superior court holden at St. Louis, in the Territory of Missouri, a judgment was rendered against Moses Austin, at the suit of the president, directors, & company of the Bank of St. Louis, for about fourteen thousand dollars; and whereas subsequent to the date of said judgment the said Moses Austin became indebted to Rufus Pettibone and Levi Pettibone for monies advanced by them to the said Austin, for which monies they have received a conveyance of two undivided fourth parts of six hundred and forty acres of land in the county of Washington, but the said land being insufficient to secure them, this board feel disposed to give them relief and to afford them a lien, jointly with the said president, directors, & company of the Bank of St. Louis, on the lands and tenements & property of the said Austin in the Territory of Missouri;

And whereas the said Rufus & Levi have since the rendering of the said judgment received a deed from the said Austin for two undivided fourth parts of the said Austin's Mine à Breton estate, so called, situated in the county of Washington aforesaid:

Now, therefore, it is resolved that if the said Pettibones have such a deed or conveyance from the said Austin, and provided no delay shall take place in the sale of said property by virtue of or in consequence of any writs of injunctions or supercedeas, then the said Rufus & Levi shall be considered as having a lien on all the landed and other property of
294 the said Austin equally and jointly (or in proportion to the amount of his demand not secured as aforesaid) with the lien afforded to the said president, directors, & company by the judgment aforesaid obtained by them against the said Austin; and the said Rufus & Levi shall be entitled to dividends out of the monies from time to time raised out of the property of said Austin proportionate to the amount due to the said Bank of St. Louis and the amount due and not secured to the said Pettibones from the said Austin. And it is hereby understood that the sum to be secured to the said Rufus & Levi mentioned in the foregoing resolution shall be one thousand dollars, without further investigation; and if the said property shall be purchased for the said bank, the said Rufus & Levi shall be entitled to an undivided share of the said property in the said proportions as the said sum of one thousand dollars is to the said debt of the said bank.

(Signed)
RISDON H. PRICE, *President.*
S. HAMMOND,
WM. M. O'HARA,
CLEMENT MARCH,
THEODORE HUNT,
ABŸOH HULL,
ROBERT SIMPSON,
Directors of the Bank of St. Louis.

I certify the foregoing to be a true copy from the minutes of the Bank of St. Louis.

St. Louis, July 20th, 1820.

RISDON H. PRICE, *Pres't.*

295 *Notice to take depositions.*

In the circuit court of the United States for the eastern district of Missouri.

William J. Bryan et al., plaintiffs,
against
Ferdinand B. Kennett et al., defendants.

To the above-named plaintiffs and D. F. Jewett, esq., their att'y:

You are hereby notified that depositions of witnesses, to be read in evidence in the above-entitled cause on the part of the defendant, will be taken at the clerk's office of the circuit court in the town of Potosi, county of Washington, State of Missouri, on the nineteenth day of March, 1878, between the hours of eight in the forenoon and six o'clock in the afternoon of that day, and that the taking of such depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, until completed.

DONOVAN & CONROY,
For Def'ts.

Service of the above notice is hereby acknowledged, and issue of declimus and all exceptions as to time waived.

March 12th, 1878.

D. T. JEWETT,
Att'y for Pl'ff.

296 Depositions of witnesses, produced, sworn, and examined on the nineteenth day of March, in the year of our Lord 1878, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the clerk's office of the circuit court in the town of Potosi, county of Washington, State of Missouri, before me, James A. Shields, a notary public, in a certain cause now pending in the circuit court of the United States for the eastern district of Missouri, between William J. Bryan et al., plaintiff, against Ferdinand B. Kennett et al., defendants, on the part of defendants.

Isreal McGready, of lawful age, being produced, sworn, and examined on the part of the defendant, deposeth and saith:

I reside near Potosi, Washington County, Missouri; my age is seventy-five years; I have resided at Potosi, Missouri for sixty years; I have resided here continually for that time. I was acquainted with Moses Austin during his life-time; I was acquainted with James Bryan during his life-time; I was also acquainted with William Milam during his life-time; I was also acquainted with Maj. John Deane during his life-time.

When I first came to this country Moses Austin was in possession of a tract of land at Potosi known as Austin's grant, being survey No. 430, except such portions as he had conveyed to other parties. He remained in possession of said tract of land for several years after I 297 came to the country. It remained in the possession of said Moses Austin up to the time of the sale by the marshall under an order of the Territorial court at St. Louis, which sale was March 22, 1820. At that time he had erected a residence known as Durham Hall (then known as the finest residence in the Territory), and had a barn and other buildings and improvements, and had also erected a mill, and had several acres of land cleared, fenced, and in cultivation near and adjoining the town of Potosi. He also had other lands at what was then known as the Half-way House, and also at the furnace, which were inclosed and in cultivation, and they were all situated upon what is known as the Austin grant, No. 430. He worked the lead mines situated upon said tract, principally the mines that was then and is now known as the shaft diggings.

I have no knowledge of James Bryan's exercising any control over any portion of the tract known as Moses Austin's survey, No. 430. The James Bryan to whom I refer was the son-in-law of Moses Austin, his wife's name being Emily M. Bryan.

I do not recollect who it was that succeeded Moses Austin in the possession of said tract of land after the sale. The next whom I remember to be in the possession was Risdon H. Price. He demanded the
298 possession of the whole of said tract of land except such conveyances
excepted was reserved by Moses Austin in his deed to the Bank of St. Louis, which said conveyance is of record in book A, page 233, records of Washington County, Missouri. Risdon H. Price was succeeded in possession (and ownership) of the property by William Milam; he claimed all of the Austin survey, No. 430, except such tracts as had heretofore be' excepted by Moses Austin in his conveyance. William Milam went into the possession about the fall of 1828. He exercised acts of ownership over the whole tract. William Milam remained in continuous possession and exercised acts of ownership over the lands up to the time of the decision by Edward Bates, the ar*pe*trator in the suit between John Deane and William Milam.

John Deane went into the possession after William Milam, and he claimed the property and exercised acts of ownership over said tract of land. The possession of William Milam was adv*an*se to all other parties. Mr. Milam had his deed from Price recorded; I went into possession under that deed; he claimed title under that deed; that he was in the open possession of said lands and that parties applied to him to purchase portions of said tract of land, known as the Moses Austin survey, No.
299 430. It was a matter of general notoriety that Milam owned the
land and was in the possession of the same. John Deane went into the possession of said tract of land known as the Austin grant, No. 430, during the year 1841, he claiming the ownership and possession of the same land which William Milam had occupied and claimed. He took the possession of all the improvements and cultivated lands and resided with his family in the mansion house, known as Durham Hall. He also cultivated the improved land and operated the lead mines, and exercised acts of ownership generally over the said lands. He sold the shaft *goggongs* to the Potosi Lead Company, and remained in the possession of the remainder of the property, exercising acts of ownership over the property up to the time of the conveyance to John Deane, jr. The possession of the premises by John Deane, sr., from the time of his taking possession from William Milam up to the time of his conveyance to John Deane, sr., was open, notorious, continuous, and adverse. I never heard this title disputed.

I never heard of any claim to the premises by James Bryan, or any one on his behalf, prior to the institution of this suit or just before the bringing of the suit.

Prior to the sale by John Deane, sr., to John Deane, jr., he was in
300 the possession of the premises as the agent of his uncle, and after
the sale continued in the possession until the time of his death, which occurred in 1866. He was in the possession of the Moses Austin survey, No. 430, except such portions as had been sold off and reserved by himself and those under whom he claimed. He with his family occupied Durham Hall as his residence; took possession of the cultivated lands, and operated the mines, claiming and exercising the possession and ownership of said lands under and by virtue of the deed from his uncle, John Deane, sr., to him. His possession *his possession* continuous, adverse, and undisputed, and I heard of no claim of any other person; his possession was open and notorious and was generally known throughout the community.

After the death of John Deane, in 1866, the administrator of John Deane, jr., took possession of the property for the heirs of said John Deane, jr., and the possession of the premises has since been in the heirs of John Deane, sr.

The possession of the premises by the heirs of John Deane, sr., has been continuous, open, notorious, and undisputed up *up* to the beginning of this suit.

They claim title to said premises as the children and heirs of
301 John Deane, sr. They have been in the possession of the build-
ing, the cultivated lands, and the mines, which have been operated by their agents, servants, and lessees, and then the heirs of J'n are still in the possession of the said premises known as Austin's survey, No. 430.

Ques. Do you know what James Bryan's financial condition was in the year 1820 and prior thereto?

Ans. I do not know.

Ques. Was he reputed to be wealthy or insolvent?

Ans. He was not wealthy, and when the widow married James F. Perry, a year or two after the death of Bryan, she had nothing that I know of. I am bodily in a feeble condition; my health is good, except that I am troubled with phth'sic, so that I cannot go about. I have not been out of town for six months. I do not feel that I could safely go to St. Louis to attend this trial of this cause. The atmosphere and coal smoke there lays me up. I have business my own away from home, but I neglected it on account of my condition.

Ques. by plaintiff. What proportion of value did the 640 acres sued for, including Durham, bear to the rest of the survey when you first knew it?

Ans. I cannot say.

J. McGREADY.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

JAMES A. SHIELDS,
Notary Public.

302 Lyttleton W. Harriss, of lawful age, being produced, sworn, an' examined on the part of the defendant, deposeth and saith:

I reside in Breton Township, in Washington County, Missouri; my age, seventy-two years; I have resided in Washington County, Missouri, fifty-one years; I was acquainted with William Milam, Risdon H. Price, and Maj. John Deane in their life-times.

Ques. When you first came to this country who was in possession of what was then and is now known as the Austin grant?

Ans. Risdon H. Price.

Ques. How long did he remain in possession?

Ans. Only a year or two.

Ques. By whom was he succeeded in the possession of the property?

Ans. By William Milam.

Ques. How long did Mr. Milam remain in possession?

Ans. Mr. Milam remained in possession from 1828 until the fall of 1841.

Ques. State whether any other person was in possession besides Milam up to the time John Deane went into possession.

Ans. There was no other person in possession during that time.

Ques. During the time Milam was in possession of the land, state who, if anybody, claimed the ownership of the Austin survey.

Ans. William Milam.

Ques. State, if you know, the nature of his claim.

303 Ans. I do not know.

Ques. State the nature of his possession.

Ans. I never heard anybody claim the right of possession but Milam up to the time of the suit by John Deane, sr., against Milam; his title was undisputed up to that time.

Ques. State whether or not his possession of the premises was generally known in the community.

Ans. Yes, it was; he occupied Durham Hall, and kept store there.

Ques. Who succeeded Milam in the possession of the property?

Ans. Major John Deane, sr.; he went into possession in the fall of 1841, and occupied Durham Hall as his residence, and had possession of the other improvements, cultivated the lands, and worked the mines.

Ques. Do you know how he claimed the possession?

Ans. By purchase under a sale by himself and William Milam.

Ques. How long did John Deane, sr., remain in possession of this property?

Ans. He remain' in the possession of the premises until the sale of the shaft diggin's to the Potosi Lead Company, about the year 1854. His possession was open and generally known throughout the community.

Ques. State the nature of his possession to the Austin grant, No. 430.

304 Ans. I never heard his title disputed, nor I never heard anybody else claiming the title while he was in possession; he claimed to be the owner.

Ques. Who went into the possession of the Austin grant after John Deane, sr.?

Ans. The next person who claimed the ownership and exercised controle over the premises was John Deane, jr.

Ques. State, if you know, the nature of his claim.

Ans. He claimed that he bought it from his uncle; that is, under a deed from John Deane, sr. He had the possession of all the lands embraced in the deed from his uncle.

Ques. What acts of ownership did he exercise?

Ans. He took possession of the residence, cleared and cultivated the lands, and operated the mines.

Ques. Was his possession *was* open and generally known?

Ans. Yes; it was.

Ques. For what length of time did he continue in possession of the land?

Ans. From 1854 up to the time of his death, in 1866.

Ques. After his death who was in possession of the property?

Ans. Judge John Teasdale was in possession, as the administrator, and the heirs of John Deane, jr.

LITTLETON W. HARRIS.

305 Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

JAMES A. SHIELDS,
Notary Public.

Not being able to complete the taking of said depositions, by reason that the hour of six o'clock p. m. has arrived, I adjourn the further taking of the same till to-morrow, then to be continued at the same place and between the same hours mentioned in the annexed notice.

JAMES A. SHIELDS,
Notary Public.

Office of the clerk of the circuit court of Washington County, Missouri, March 20th, 1878.

Not being able to complete the taking of said depositions, by reason that the witnesses are absent, I adjourn the further taking of the same till to-morrow, then to be continued *and* the same place and between the same hours mentioned in the annexed notice.

JAMES A. SHIELDS,
Notary Public.

Pursuant to adjournment as above stated, on the 21st day of March, 1878, between the hours of 8 o'clock in the forenoon and six o'clock in the afternoon, at the clerk's office of the circuit court in the town of
306 Potosi, county of Washington, and State of Missouri, I continued the taking of said depositions as follows, viz:

JAMES LONG, of lawful age, being produced, sworn, and examined on the part of the defendant, deposeth and saith:

My residence is in Potosi, Washington County, Missouri. I have been there all my life. My age is 47 years.

Ques. What is your occupation?

Ans. My business is that of a manufacturer of pig-lead and a merchant. I am also treasurer of Washington County and superintendent of the Old Mines Lead Company.

Ques. How long have you been engaged in the manufacture of pig-lead and managing mining property?

Ans. Since the year 1852. In that year I took the management of the Perry Mines, near Potosi, Mo., and adjoining the lands in controversy in this suit.

Ques. State whether or not you knew the lands embraced in this suit.

Ans. I am acquainted with all the lands embraced in the Austin grant, but I do not know the exact limits or boundary of the tract embraced in this suit.

Ques. How long have you known these lands?

Ans. I have known the lands since the year 1852.

Ques. Do you know the value of the monthly rents and profits of the land during the time since 1852 to July 6th, 1876?

307 Ans. I do not know the exact value, but I do know that the property has not been very productive.

Ques. What in your opinion is a fair monthly rent in cash for the property?

Ans. Twenty or twenty-five dollars per month.

Ques. What, if anything, would the property be worth per year over and above the amount required to pay taxes?

Ans. From two hundred and fifty to three hundred dollars per year.

JAMES LONG.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

JAMES A. SHIELDS,
Notary Public.

George B. Cole, of lawful age, being produced, sworn, and examined on the part of the defendant, deposeth and saith:

My residence is Breton Township, Washington County, Missouri. My age is 73 years. I have resided in three miles of Potosi, Mo., for fifty years. I reside on a portion of the Austin grant, but not the portion included in this suit.

Ques. How long have you been acquainted with the lands of the Austin survey?

Ans. I have known the lands for fifty years.

308 Ques. Who was in possession of the Austin grant when you first knew the land, and who have been in possession since that and up to the present time?

Ans. In the year 1828 William Milam was in possession of the grant and control'ed it as the owner, and no adverse claim was heard of until Maj. John Deane came. William Milam control'ed the land, leased the same for farming purposes and for mining purposes, he received the mineral taken from the lands. He, Milam, claimed the land as owner, and I remember of his offering to sell fifty acres off said grant. His possession was open, and it was publicly known that he claimed the land and was in possession of the same. He occupied Durham Hall as a residence and a store.

Ques. Who succeeded Wm. Milam in the possession of the Austin grant?

Ans. Maj. John Deane. He had the entire controle and management of the whole property; no adverse claim that I heard of. He went into the possession about the year 1840 or 1841.

Ques. State, if you know, how he claimed possession.

Ans. He got title from Wm. Milam and he claimed title under the award made in the suit between William Milam and himself.

Ques. State whether or not he claimed to be the owner.

309 Ans. He did; no adverce claim was ever set up, to my knowledge.

He openly took the controle and management of the whole property; occupied Durham Hall as his family residence. He took the possession of the improvements, and farmed a part, and leased a part of the lands; he operated the mines and smelted the mineral upon a furnace which he built himself. The same furnace still stands upon the lands. He sold small tracts of land out of the grant.

Ques. State whether or not his possession and claims of ownership were generally known throughout the community.

Ans. He was in open and notorious possession, with no adverse claims, and said possession and claim of ownership was a matter of public notoriety throughout the community.

Ques. How long did Maj. John Deane remain in possession of these premises?

Ans. He remained in the possession until the sale by him to John Deane, sr., which date I do not remember.

Ques. Do you know the nature of John Deane, jr.'s, claim to the possession of these land. If so, state it.

Ans. He claimed under a purchase from Maj. Deane, his uncle.

Ques. State, if you know, the character of the possession.

Ans. The character of his possession was that he had the sole controle of all the Austin grant except such tracts as have been
310 conveyed by those under whom he claimed; that he occupied the mansion house, cultivated the lands, and operated the mines. He sold some tracts of land out of the Austin grant. He also laid out an addition to the town of Potosi on a portion of the tract. He openly claimed the title to the property. His possession was public and was a matter of general notoriety.

Ques. How long did John Deane, jr., remain in possession of the land?

Ans. He remained in the possession until the time of his death, which occurred in 1866.

Ques. State who has been in possession of the premises since the death of John Deane, jr.

Ans. The heirs of John Deane, jr.

G. B. COLE.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

JAMES A. SHIELDS,
Notary Public.

JOHN TEASDALE, of lawful age, being produced, sworn, and examined on the part of the defendant, deposeth and saith:

I reside at Potosi, Washington County, Missouri. My age is 54 years.

I have resided here since the fall of 1841, except temporary absence of about two years and a half.

311 Ques. Are you acquainted with the lands generally known as the Austin grant?

Ans. I am.

Ques. Who was in possession of those lands when you came here in 1841?

Ans. I do not know whether it was Wm. Milam or Maj. Milam. Maj. Deane took possession of the land soon after I came here.

Ques. State the character or nature of his possession.

Ans. My understanding was that he had bought the property and owned it. He resides in Durham Hall, and cultivated the farming land, operated the mines, smelted mineral, and exercised a general controle and manag'ent over the property. He sold some portions of the property. I never heard of his title being disputed after he took possession. His possession and claim of ownership was a matter of general notoriety.

Ques. How long did remain in the possession of the property?

Ans. I think he remover from there about 1851 or 1852. He left his nephew, John Deane, jr., in possession, as his agent, and John Deane, jr., subsequently bought out Maj. Deane, and after the purchase John Deane, jr., went into possession, claiming to be the owner of the property.

Ques. What acts, if any, of ownership did he exercise?

Ans. He used the property as his own; sold some portions of it. He cultivated the farming land and operated the mines, smelted the

312 mineral; he also resided in Durham Hall, and laid out an addition to the town of Potosi or a portion of the land embraced in this suit.

Ques. Were his claims of ownership and the fact of his possession generally known in the community or not?

Ans. I think they were; either that he was the agent of his uncle, Maj. Deane, or that he was acting for himself. I never heard of any dispute as to his right of possession either as owner or as the agent of his uncle.

Ques. How long did John Deane, jr., remain in the possession of the premises?

Ans. He remained in possession up to the time of his death, which occurred in August, 1866.

Ques. Who then took possession of the property?

Ans. His children, Miss Margaret B., Fannie A., Annie G., and John B. Deane, they claiming the ownership as his heirs, exercising the same rights that their father had in his life-time, leasing the lands, operating the mines, smelting the mineral, and selling portions of the tract.

Ques. What was the nature of their possession?

Ans. So far as I know it was open and generally known. I never heard of their right being questioned by any person until the bringing of this suit.

Ques. What business relations, if any, existed between yourself and John Deane, jr., during his life-time?

313 Ans. He and I were engaged as partners in the mercantile business, and I bought mineral for him from off this tract of land. After his death I was the administrator of his estate and had the controle

and management of the property as administrator, agent, and lessee since the time of his death.

Ques. State whether you know the value of the monthly rents and profits of the property.

Ans. From six to eight hundred dollars per year would cover the rents on the property of said grant which is embraced in this suit.

Ques. State, if you know, the value of the monthly rents and profits after deducting taxes.

Ans. I think it would be very little. I do not think it would be over one or two hundred dollars per year.

JOHN TEASDALE.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

JAMES A. SHIELDS,
Notary Public.

I, James A. Shields, a notary public within and for the county of Washington and State of Missouri, do certify that, in pursuance of the annexed notic, came before me, at the clerk's office of the circuit court in the town of Potosi, in the county and State last aforesaid, Israel McGready, L.
314 W. Harris, James Long, G. B. Cole, and John Teasdale, who wer' by
me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined, and their examination reduced to writing by me and subscribed by them, respectively, in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and their said depositions are now herewith returned; and I hereby certify that I. McGready, L. W. Harris, James Long, G. B. Cole, and John Teasdale are residents of said county of Washington and State of Missouri. Given at Potosi, in the county of Washington and State of Missouri, on the twenty-first day of March, 1878.

I was qualified March 16, 1873. M' term expires March 16th, 1879.

Witness my hand and notarial seal.

[SEAL.] JAMES A. SHIELDS,
Notary Public.

STATE OF MISSOURI,
County of Washington, ss:

It is hereby certified that James A. Shields, on the nineteenth, twentieth, and twenty-first days of March, in the year of our Lord 1878, was and now is a notary public within and for the county of Washington, State of Missouri, duly commissioned and acting as such, and that full faith and
credit are due to his acts as such.

315 In testimony whereof I, Erastus B. Smith, clerk of the county
court within and for the county of Washington aforesaid, have hereunto subscribed my name and affixed the seal of office this 22d day of March, 1878.

[SEAL.] E. B. SMITH,
Clerk County Court.

(Here follows diagram marked page 316.)

317 Plaintiff offered in rebuttal extract from the minutes of the circuit court of Washington County, Aug. 23d, 1823, as follows:

SATURDAY, *August 2d*, 1823.

Court met pursuant to adjournment.

This day personally appeared in open court Andrew Miller, late deputy of Daniel Dunklin, late sheriff of Washington County, and affixed his seal to an instrument of writing purporting to be a deed conveying Moses Austin's title to the Mine à Burton tract of land to Charles R. Ross, and thereupon acknowledged the execution of said deed to be his act and deed for the purposes the'n mentioned.

STATE OF MISSOURI,
County of Washington, ss:

I, Andrew F. Casey, clerk of the circuit court within and for the county of Washington, State aforesaid, do hereby certify that the foregoing is a true and perfect copy from the records of said court as fully as the same remains of record in book B of circuit court records, page 210, of the records of my office.

318 Witness my hand, and the seal of said court affixed, at office in Potosi, this day of May, A. D. 1876.

ANDREW F. CASEY, *Clerk.*

Certified copy of deed by the sheriff to Charles R. Ross, ag't, as recorded July 12, 1825, with minutes of the court added, as follows:

To all to whom these presents shall come, greeting, Andrew Miller for Daniel Dunklin, sheriff of the county of Washington, in the Territory of Missouri:

Whereas two writs of execution were, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and nineteen, issued from the clerk's office of the superior court of the Territory of Missouri against the goods and chattels, lands and tenements of the said Moses Austin, directed to the sheriff of the county aforesaid, and to him, the said sheriff, delivered on the sixth day of November, in the year of our Lord one thousand eight hundred and nineteen, the copies of which said executions is herein recited and is in the words & figures following, to wit:

TERRITORY OF MISSOURI,
Northern Circuit:

The United States of America to the sheriff of the county of Washington, greeting:

Whereas the president, directors, and company of the Bank of St. Louis, at our superior court of our Territory of Missouri, held in and for
319 the northern circuit, before the judge of our said court at St. Louis, recovered against Moses Austin the sum of fourteen thousand twenty-six dollars seventy-two and three-fourth' cents which to them were adjudged for their damages, which they obtained as well by reason of not performing certain promises and assumptions as for their costs and charges by them about their suit expended, as appears to us of record:

These are therefore to command you that of the goods and chattels, lands and tenements of the said Moses Austin in your bailiwick you cause to be made the damages and cost aforesaid, and that you have the same before our judge aforesaid at the town of St. Louis, on the fo'rth Monday in April next, to render to said president, directors, and company the damages aforesaid; and for want of sufficient goods and chattels, lands and tenements of the said Moses Austin in your bailiwick whereon to lay and make the same, we command you that you take said Moses Austin, if he be found within your bailiwick, and him safely keep so that you have his body before the same judge on the said fourth Monday in April next,
to satisfy the said plaintiff the damages & costs aforesaid, and that
320 you certify to our said judge how you execute this writ; and have
you then and there this writ.

Witness the honorable Silas Bent, esquire, presiding judge of our said court at St. Louis, this fourteenth day of October, in the year one thousand eight hundred & nineteen, & of our Independence the forty-fourth.

J. V. GARNIER,
Cl'k S. C. N. C.

Territory of Missouri, northern circuit of the United States of America, to the sheriff of the county of Washington, greeting:

Whereas Alexander McNair, at our superior court of our Territory of Missouri for the northern circuit, before our judge, hath recovered against Moses Austin the sum of four hundred and ninety-three dollars & ninety-four cents, which to the said Alexander McNair were adjudged for his damages which he sustained as well by reason of not performing certain promises and assumptions as for his costs in that suit expended, as appears to us of record:

These are therefore to command you that of the goods and chattels, lands and tenements of the said Moses Austin you cause to be made the damages & costs aforesaid, and that you have the same before the judge of our said court on the said fourth Monday in April next, to render
the said Alexander McNair the damages aforesaid; and for want
321 of sufficient goods and chattels, lands and tenements whereon to
levy and make the same, we command you that you take the said Moses Austin, if he be found within your bailiwick, and him safely keep so that you have his body before the same judge on the said fourth Monday in April next, to satisfy the said Alexander McNair the damages & costs aforesaid, and that you certify to our said judge how you execute this writ; and have you then and there this writ.

Witness the honorable Silas Bent, esquire, presiding judge of our said court at St. Louis, this fourteenth day of October, A. D. 1819, and of our Independence the forty-fourth.

J. V. GARNIER,
C'k S. C. N. C.

By virtue of which said writs of *of* executions the said sheriff, on the twenty-first day of March, one thousand eight hundred and twenty, did levy and seize upon all the right, title, claim, interest, and property of said Moses Austin of, in, and to a tract of land lying and being in the county of Washington, on Mine Creek, adjoining the village of Mine à

Briton, being one league square, except three several lots, to wit: One lot to Israel McGready, containing two acres and thirteen poles, beginning
322 at the Northwest corner of John S. Brickey's lot, on Burton street, in the town of Potosi, running with said street No. 58 W. nine poles to a stake; thence South seventy-three and a half W. sixteen poles to a thorn-bush; thence S. 47 West seven poles and fifteen links to Mine Creek; thence up said creek South thirty E. eleven poles to a stake corner to Israel McGready; thence with his line N. 32 E. twenty-four poles to a stake; thence S. 32 E. six poles and three links to the Southwest corner of John S. Brickey's lot; thence with said lot No. 58 E. thirteen poles and five links to the beginning. One lot of twelve acres to John Brickey, to be land off according to the following boundaries, to wit, bound' E. by Potosi & Enoch Windus' lot, W. by Israel Brickey's lot and hollow below said Jerard Brickey, to run to the head thereof; thence to the lots laid off by Moses Austin adjoining the town of Potosi; thence with said lots as to include said twelve acres. One lot of one acre to Jerard Brickey, adjoining the said Jerard's former purchase of Moses Austin, at the lower end of his lot, the whole width thereof, with all and singular the buildings and improvements thereon, having been by him, the said deputy sheriff, advertised agreeable to law twenty days before
323 the day of sale by hand-bills, six of which were affixed and set up in six of the most public places in the county, a copy of which is in the words and figures following, to wit:

ALEXANDER MCNAIR
vs.
MOSES AUSTIN.

THE PRESIDENT, DIRECTORS, & CO.
of the Bank of St. Louis
vs.
MOSES AUSTIN.

Sheriff's Sale.

Will be offered for sale on the second day of the next March term of the circuit court, and while the honorable court are sitting for the county of Washington, all the right, title, and interest of Moses Austin to his Mine au Breton tract of land, in lots or the whole, as it may be offered on the day of sale. The said land is confirmed on the of the Mineral Fork adjoining Mine au Burton, in Breton Township, levied on as the property of said Austin to satisfy the said executions and cost; made returnable to the superior court, St. Louis, April term, 1820.

February 28th, 1820.

A. MILLER, *D. Sheriff,*
For D. DURKLIN, *Sheriff.*

A copy of which said advertisement has been by me returned and filed in the office of the circuit court, according to law.

In pursuance to which said executions and advertisements the said deputy sheriff, and on the twenty-first day of March, one thousand eight hundred and twenty, being Tuesday, the second day of the term of the 324 circuit court for the county of Washington, and white said court was in session, at the court-house door, expose' to public sale, to satisfy the said writs of executions aforesaid, the aforesaid tract of land, with all and singular the buildings and improvements thereon of whatsoever nature and kind, and Charles R. Ross, agent for the president, directors, & co. of the Bank of St. Louis, was the highest and best bidder for the same for the sum of seven thousand one hundred dollars, when the same was by the said deputy sheriff struck off to him, the said Charles R. Ross.

Now, know ye that Andrew Miller, for Daniel Durklin, sheriff of the said county of Washington, for and in consideration of the said sum of seven thousand one hundred dollars, lawful money, to me in hand paid by the said Charles R. Ross, agent for the president, directors, & company of the Bank of St. Louis, and by virtue and in pursuance of the authority in me vested as d. sheriff by law, doth grant, bargain, sell, transfer, assign, and set over, and by these presents doth give, grant, bargain, sell, transfer, assign, and set over unto him, the said Charles R. Ross, his heirs and assigns, all the right, title, claim, interest, and property of him, the said Moses Austin, of, in, and to the aforesaid tract or piece of land, 325 with all and singular the buildings and appurtenances belonging or affixed to the same: To have and to hold the said tract of land aforesaid, with the appurtenances, to the said Charles R. Ross, his heirs and assigns, forever.

In testimony whereof I have hereunto set my hand and seal, at the town of Potosi, this twenty-first day of March, in the year one thousand eight hundred and twenty.

[SEAL.]

A. MILLER, *Deputy Sheriff*,
For D. DURKLIN, *Sheriff*.

TERRITORY OF MISSOURI,
Washington County, *ss:*

I, John Brickey, clerk of the circuit court in and for the county aforesaid, do hereby certify that Andrew Miller, deputy sheriff for Daniel Durklin, sheriff of the county aforesaid, appeared in open court on the twenty-second day of March, in the year one thousand eight hundred and twenty, and acknowledged the within instrument of writing to be his voluntary act and deed for purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of office, at office, this twenty-second day of March, A. D. 1820, and of the Independence of the United States the forty-fourth.

JOHN BRICKEY, *Cl'k.*

I, John Jones, clerk of the circuit court in and for the county of 326 Washington, do hereby certify that Andrew Miller, late deputy of Daniel Durklin, late sheriff of Washington County, on the second day of August, in the year of our Lord eighteen hundred & twenty-three, came and in open court affixed his seal to the within deed, thereupon acknowledged the execution of said deed to be his act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of office, at office, the second day of July, eighteen hundred & twenty-five.

JOHN JONES, *Cl'k.*

WASHINGTON COUNTY, *ss:*

Recorded in book A, pages 486, '7, '8, '9, & 490, bearing date May the 29th, 1820.

JOHN BRICKEY, *Recorded.*

Rec'd for record of Mr. Geyer on the 29th March, 1824, & recorded in book B, pages 137, 138, & 139, on the 2nd day of April, 1824.

JOHN JONES, *Recorded.*

Recorded, bearing date July 12th, 1825.

JOHN JONES, *Recorder.*

STATE OF MISSOURI,
County of Washington, ss:

I, Andrew F. Casey, clerk of the circuit, and ex officio recorder within and for the county and State aforesaid, do hereby certify that the foregoing is a true and complete copy of the record of an instrument of writing purporting to be a sheriff's deed to Charles R. Ross, and also the certificate of acknowledgement thereof, as fully as the same remains of 326½ record in book B of deeds, pages 203, 204, & 205 of the records of my office.

Witness my hand and the seal of the circuit court of Washington County, affixed at Potosi, Mo., this 15th day of May, A. D. 1876.

ANDREW F. CASEY,
Clerk and Ex officio Recorder.

327 The above was all the testimony in the case. The court then, on its own motion, gave to the jury the following instructions:

Instructions of court to jury.

U. S. cir. ct., March T., 1878.

WM. J. BRYAN ET AL.
vs. } Court's charge.
FERDINAND KENNETT ET AL.

GENTLEMEN OF THE JURY: Under the act of February 14th, 1874 (18 Stats. at Large, 16), as applied to documentary and record proofs in the cause, & the undisputed fact of open, actual, adverse, & continuous possession in the defendants and those under whom they claim title to the premises in controversy since the year 1828, the court instructs the jury as follows:

1. That the said act of Congress recognizes claim of Moses Austin arising from the concession, survey, & grant therein recited, & was intended to pass any remaining title (if such there was) in the United States to the assignee of the said claim if the same had been assigned by the said Austin.

2. The sheriff's sales in 1820, under judgments against Moses Austin, followed by sheriff's deeds, did make the purchaser an assignee within the meaning of said act of Congress. (Landes v. Perkins, 12 Mo., 238; Landes v. Brandt, 10 How., 348.)

3. If those sheriff's sales & deeds were defective, the record &
328 decree in the suit in the case of Dean (under whom defendants claim) against Wm. J. Bryan & others (including inter alias), the plaintiff in this suit, is conclusive against the present plaintiffs, and estopp them from attaching in this collateral manner the validity of said sheriff's sales & deeds.

These views give the defendants a title irrespective of the act of April 12, 1814 (Stats. at Large, vol. 3, p. 121), & irrespective of whether the defendants, under the implications of the act of Febr'y 14, 1874, may not have a good title or defense under adverse possession, as to which points we do not find it necessary to give any opinion. Under these instructions you will find a verdict for the defendant.

JOHN F. DILLON.
SAMUEL TREAT.

329 (To the giving of which instructions the plaintiffs then and there objected and excepted.)

Verdict for the defendant.

Whereupon the jury rendered a verdict for the defendant.

WILLIAM J. BRYAN AND OTHERS
vs.
FERDINAND B. KENNETT AND OTHERS.

We, the jury, find for the defendants.

E. A. MANNY, *Foreman.*

In due time the plaintiff filed his motion for a new trial, as follows:

Motion for new trial.

In the United States circuit court, eastern district of Missouri, March T., 1878.

WM. J. BRYAN ET AL., PL'FF,
vs.
F. B. KENNETT ET AL., DEF'TS.

And now comes the plaintiff & moves the court to set aside the verdict rendered for the defendant, & to grant the plaintiff a new trial for the following reasons:

1st. Because the court erred and gave illegal and improper instructions to the jury.

2nd. Because the court excluded legal and proper evidence offiered by the plaintiff.

3rd. Because the court admitted illegal and improper evidence offered by def'ts and objected to by pl'ffs.

4th. Because the court instructed to find for the def'ts when they should have instructed to find for pl'ff.

D. S. JEWETT,
Att'y for Pl'ffs.

330 Which motion was overruled by the court, to which action of the court in the overruling of said motion the plaintiffs then and there excepted.

Wherefore the plaintiffs pray that all the deeds, testimony, evidence, instructions, motions, and rulings may be made a part of the record; which is accordingly done.

SAMUEL TREAT, *Judge*. [SEAL.]

Agreed to.

D. T. JEWETT,
Att'y for Pl'ff.
DONOVAN & CONROY,
For Def'ts.

331 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings, with the exception of the first paper offered in evidence by the defendants, and noted in the bill of exceptions in case No. 830, of William J. Bryan et al., plaintiff, against Ferdinand B. Kennett et al., defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 12th day of October, in the year of our Lord eighteen hundred and eighty.

[SEAL.] M. M. PRICE,
Clerk of said Court,
By T. L. CRAWFORD, *Deputy.*

(Indorsement on cover:) No. 137. William J. Bryan, Moses A. Bryan, & Guy M. Bryan, plaintiffs in error, vs. Ferdinand B. Kennett, John Teasdale, Charles A. Mallory, and Fannie Mallory, his wife, Margaret Dean, & Annie G. Dean. E. Missouri C. C. U. S. Filed 16th October, 1880.

113-179

Office Supreme Court U.S.
FILED
OCT 7 1884
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1884.

No. 7.

WILLIAM J. BRYAN, MOSES A. BRYAN AND GUY M. BRYAN,
Plaintiffs in Error,

vs.

FERDINAND B. KENNETT, ET AL.,
Defendants in Error.

STATEMENT AND BRIEF.

HENRY H. DENISON,
Counsel for ~~Defendants~~ Plaintiffs in Error.

ST. LOUIS: PRINTED BY THE CENTRAL LAW JOURNAL.

IN THE

Supreme Court OF THE United States

OCTOBER TERM, A. D., 1884.

WILLIAM J. BRYAN, ET AL.,
Plaintiffs in Error,

vs. No. 7.

FERDINAND B. KENNETT, ET AL.,
Defendants in Error.

Brief for plaintiff in error, on writ of error to the Circuit Court of the United States, for the Eastern District of Missouri.

STATEMENT.

This is an action in ejectment brought to recover lands claimed by the plaintiffs as the heirs, legal representatives and assigns of their ancestor Moses Austin, they claiming to be the grantees and confirmees of the lands embraced in United States survey No. 430, commonly known as the Moses Austin grant, or Mine a Breton survey.

On the 15th day of March A. D., 1797 the Baron of Carondelet, Governor General of the Province of Louisania, ordered Zenon Trudeau, lieutenant governor of said Province, to place Moses Austin in possession of a tract of land one league square at Mine a Breton in said Province.

On the 14th day of January A. D., 1799 the said Zenon Trudeau, lieutenant governor of the said Province, ordered Antoine Soulard, surveyor in said Province, to survey the said land and put the said Moses Austin in possession of the same.

The said Antoine Soulard made the said survey June 2, A. D., 1800, and put the said Moses Austin in possession of the same which said survey is numbered fifty-two (52) containing seven thousand one hundred and fifty-three arpents and three and two-thirds feet, and the said Antoine Soulard filed his certificate thereof on the 28th day of November A. D., 1800.

On the 5th day of July 1802. Don Juan Ventura Morales Intendant of Louisiana, granted to the said Moses Austin the land so surveyed and located.

This claim of Moses Austin to the above mentioned tract of land was presented for confirmation to the old Board of Commissioners appointed to adjust land claims in Louisiana Territory, which said board on the 21st day of December 1811, reported adversely to the same, because the same was not a complete grant prior to October 1, 1800.

This claim of Moses Austin is not included or scheduled in the confirmations of Recorder Bates, as successor of the old Board, reported in 1816.

No United States Patent has ever issued for the lands embraced in this survey.

On the 14th and 15th days of August, 1817, the United States, by Survey No. 430, surveyed, in the name of the said Moses Austin, the above mentioned tract of land.

On the 15th day of February, 1820, the said Moses Austin, and Mary, his wife, deeded the whole of the tract of 7,153 arpents of land embraced in the U. S. Survey, No.

430, with some exceptions, to James Bryan, the father of these plaintiffs, and to Rufus and Levi Pettibone. The one undivided half thereof to the said James Bryan, and the one undivided fourth part each to the said Levi and Rufus Pettibone. This deed was recorded February 29, 1820.

James Bryan and Emily M. Austin were married on the 31st day of August, 1813.

Moses Austin died on the 10th day of June, 1821.

James Bryan died on the 16th day of July, 1822.

Emily M. Bryan, his widow, was married to James F. Perry on the 23d day of September, 1824.

The plaintiffs are the children of the said James Bryan and Emily M. Austin, and the grand-children of the said Moses Austin.

On the 14th day of February, A. D. 1874, by Act of Congress the title of the United States in the lands embraced in said Survey No. 430, was released to and vested in the heirs, legal representatives and assigns of the said Moses Austin, according to their respective interests therein.

The defendants claim title to the land by adverse possession, pleading the statute of limitations, and also set up a title as grantees of the said Moses Austin, derived in the following manner.

On the 11th day of March, A. D. 1818, Moses Austin mortgaged six hundred and forty acres out of said tract, locating the same by metes and bounds, to the Bank of St. Louis to secure the payment of an indebtedness from the said Moses Austin to the said Bank of St. Louis, of about fifteen thousand dollars.

On the 15th day of February, A. D. 1819, the said Bank of St. Louis, sued the said Moses Austin in the Superior Court for the northern circuit of the Territory of Missouri upon the indebtedness which was secured by said mortgage.

On the 1st day of October, A. D. 1819, at the September term of the said Superior Court, judgment was rendered against the said Moses Austin in favor of the said Bank of St. Louis, for the sum of 14,001.85¼–100 dollars.

At an unknown date the said Moses Austin recovered a judgment in the said Superior Court against one Alexander McNair, that the said McNair take nothing by his writ, and that the said Moses Austin recover of the said McNair, his costs and charges.

On the 4th day of August, A. D. 1819, an execution was issued upon the said judgment that the said Alexander McNair recover of the said Austin the sum of 493.94–100 dollars and for his costs.

On the 14th day of October, A. D. 1819, an alias execution was issued on the above.

On the 14th day of October, A. D. 1819, an execution was issued on the aforesaid judgment of the Bank of St. Louis v. Moses Austin for the sum of 14,026.72¼–100 dollars.

On the 21st day of March, 1820, the deputy sheriff levied and seized upon all the right, title, claim, interest and property of said Moses Austin, in and to the tract of land embraced in U. S. Survey, No. 430, upon said two executions.

(P. 34 of Record.)

On the same day, to-wit: The 21st day of March, A. D. 1820, the said deputy sheriff sold the said tract of land to satisfy the said two executions to Charles R. Ross, agent of the Bank of St. Louis for the sum of 7,100 dollars.

(P. 36 of Record.)

On the same day, to-wit: The 21st day of March, A. D. 1820, the said deputy sheriff deeded the said property to the said Charles R. Ross, agent, by an instrument in writing without a seal, and without a seal to the clerk's certificate of acknowledgment.

(P. 36 of Record.)

On the —— day of April, A. D. 1820, Risdon H. Price, as President of said Bank of St. Louis, deeded to the said Charles R. Ross, in trust all the right, title, interest and claim which the said Bank of St. Louis has in, to and upon the said property, "by an instrument in writing without a seal, and without a seal to the clerk's certificate of acknowledgment."

On the 21st day of December, A. D. 1820, Robert Simpson, Rufus Easton and Samuel Hammond deeded the same property to the said Charles R. Ross in trust, by a deed under their seals, but without any seal to the clerk's certificate of acknowledgment.

On the same day, to-wit: The 21st day of December, A. D. 1820, the said Charles R. Ross, as agent of the said Bank of St. Louis, deeded the said property to the said Risdon H. Price.

From Risdon H. Price and his grantees, the property was conveyed to John Deane, the ancestor of the defendants.

John Deane on the 1st day of April, 1836, filed a bill in equity, which is virtually a bill to quiet title, against certain defendants, including among others, the present plaintiffs. This bill sets forth the fact that Deane's foundation of title is the deed of the sheriff executed to Charles R. Ross, without seal—to quote the language of the bill "thereupon the "said sheriff of Washington County executed to the said "Charles R. Ross an instrument in writing, without seal or scroll."

The bill alleges that the defendants excepting Emily M. Perry and James F. Perry, her husband are minors.

John Brickey was appointed guardian *ad litem* of the minor defendants against whom a service by publication appears to have been had, which was unwarranted by law.

The guardian *ad litem* then confessed the allegations of the bill for his wards, and in accordance with the prayer of the bill the court, without hearing any proofs, decreed the title of the said property out of the minor defendants, the plaintiff's herein, and vested it in the said John Deane.

The second chain of title offered in evidence, is wholly immaterial to this cause, as it merely tends to show how these defendants acquired the title of the Pettibones, which was never in James Bryan.

The defendants are heirs of the said John Deane, and such title as they may have they take by descent from him.

ASSIGNMENT OF ERRORS.

1. That the court admitted improper and illegal testimony offered by defendants.

2. That the court rejected proper and legal testimony offered by plaintiffs.

3. That the court gave to the jury improper and illegal instructions.

4. That the court refused to give to the jury proper and legal instructions offered by plaintiffs.

5. That the verdict was against the evidence.

6. That the verdict was against the law.

7. That the verdict was against both law and evidence and against the law under the evidence.

8. That the verdict was against the weight of evidence.

9. That the judgment was rendered in favor of defend-

ants when it should have been rendered for the plaintiffs.

10. That the court overruled the motion for a new trial made by plaintiffs.

All of the foregoing errors are relied upon and asserted and intended to be urged, excepting the second and the fourth. Those more particularly relied upon are the first and the third, as the others are necessarily dependant on these two. The substance of the evidence admitted by the court against the objections of the plaintiffs is set out in the following:

POINTS AND SPECIFICATIONS.

1. The Morales grant being void, Moses Austin had no title either in law or equity, which could be subject to levy and sale under execution.

2. The title not having emanated from the Government of the United States prior to the Act of Congress of Feb. 14th, 1874, the statute of limitations is no bar.

3. No equity passed to Moses Austin by the Act of Congress of April 12th, 1814.

4. The executions issued upon the judgments against Moses Austin, not being under the seal of the court, were void.

5. The sale of the Mine a Breton survey, by the sheriff upon the said executions, was consequently void.

6. The sale was also void, for that an action at law was brought upon notes secured by mortgage, judgment obtained and the mortgaged property levied upon and sold, thus depriving the mortgagee of his equity of redemption.

7. The deed of the sheriff upon said sale to Charles R. Ross, having no seal, was void.

8. The certificate of the clerk of the court taking the acknowledgment of the sheriff, not being under the seal of the court, is therefore void.

9. The deed of Risdon H. Price as president of the Bank of St. Louis, to Charles R. Ross, not being under the seal of the bank, is void—and is also void not having the seal of the clerk to the acknowledgment.

10. Deane having no title, was not in a position to bring a bill in equity to divest title out of non-resident minors, and have it decreed into himself; the more as the bill alleges that the deed which is the foundation of his title, is a sheriff's deed which has no seal.

11. The service by publication on non-resident minors, was unwarranted by law, and consequently no service, and the court had no power to appoint a guardian *ad litem* for them.

12. The guardian *ad litem* (who seems to have been the county recorder), without employing any attorney, confesses the allegations of the bill. This action could not affect or prejudice the interests of his wards.

13. The court having rendered a decree against non-resident minors, by consent of their guardian *ad litem*, and, without any evidence having been introduced to support the allegations of the bill, having divested their title and decreed it to be in the plaintiff, such a decree is a nullity as to them, and cannot impair theii title or prejudice their rights.

The instruction of the court, given of its own motion to the jury, is in the following words:

"GENTLEMEN OF THE JURY:

"Under the Act of February 14th, 1874, (18 Stat.

"at Large, 16,) as applied to documentary and record "proofs in the cause, and the undisputed fact of open, actual, adverse and continuous possession in the defendants, "and those under whom they claim title to the premises in "controversy since the year 1828, the court instructs the "jury as follows;

1. "That the said Act of Congress recognizes claim of "Moses Austin arising from the concession, survey and "grant therein recited, and was intended to pass any remaining title, (if such there was,) in the United States, to the "assignee of the said claim if the same had been assigned by the said Austin."

2. The sheriff's sales in 1820, under judgments against Moses Austin, followed by sheriff's deeds, did make the purchaser an assignee within the meaning of said Act of Congress. (Landis v. Perkins, 12 Mo., 238. Landis v. Brandt, 10 How., 348.)

3. "If those sheriff's sales and deeds were defective, the "record and decree in the suit in the case of Dean, (un-"der whom defendants claim) against Wm. J. Bryan and "others, (including *inter alias*,) the plaintiff in this suit, is "conclusive against the present plaintiffs, and estop them "from attacking in this collateral manner the validity of "said sheriff's sales and deeds.

"These views give the defendants a title irrespective of "the Act of April 12, 1814, (Stat. at Large, Vol. 3, p. "121,) and irrespective of whether the defendants, under "the implications of the Act of February 14, 1874, may "may not have a good title or defence under adverse possession, as to which points we do not find it necessary to give "any opinion. Under these instructions you will find a verdict for the defendant."

JOHN F. DILLON,
SAMUEL TREAT.

P. 151 of Record.

The cause coming on to be heard, the plaintiffs offered in evidence the following:

1. Certified Copy of U. S. Survey, No. 430, in the name of Moses Austin, dated August 14 and 15, 1817, for 7,153 arpents of land.

See P. 13 of Record.

2. Certified copy of deed from Moses Austin to James Bryan, et. al., conveying to him one undivided half part of the claim of 7,153 arpents, being the same known as U. S. Survey, No. 430, dated February 15, 1820.

P. 14 of Record.

3. Deposition of Guy M. Bryan, showing that the plaintiffs are the children of the said James Bryan and Emily M. Austin, his wife, and the grand-children of the said Moses Austin.

Pp. 16 and 17 of Record.

4. Act of Congress of February 14, 1874, conveying the interest of the United States in said survey to the heirs, legal representatives, and assigns of the said Moses Austin.

P. 18 of Record.

The plaintiffs then rested.

5. The defendants then offered in evidence certified copy of the order of the Baron de Carondelet, Governor-General of the Province of Louisiana, dated March 15th, 1797, instructing Zenon Trudeau, Lieutenant-Governor of said Territory, to place Moses Austin in possession of a league square of land at Mine a Breton, in said Province.

P. 19 of Record.

6. Certified copy of plat of Survey No. 52, containing 7,153 arpents, 32⅜ feet of land, in the right of Moses Austin, as the same appears of record in first part of registred arpentage, page 85, Soulard's Surveys, in the office of the Register of Lands, in the State of Missouri.

P. 20 of Record.

7. Copy of the record of grant by Don Juan Ventura Morales, Intendent of the Province of Louisiana to Moses Austin, dated July 5th, 1802.

P. 22 of Record.

All of the above objected to by plaintiffs, as void under the laws of the United States, and irrelevant. Objection overruled, to which the plaintiffs then and there excepted.

8. Claim of Moses Austin for 7,153 arpents of land, recorded by U. S. Recorder of land titles.

P. 24 of Record.

9. Certified copy of the mortgage of Moses Austin to the Bank of St. Louis, dated March 11, 1818, conveying six hundred and forty acres out of said tract, locating the same by metes and bounds.

P. 25 of Record.

10. Certified copy of judgment and execution of the Bank of St. Louis against Moses Austin, of the 1st day of October, A. D., 1819.

P. 26 of Record.

(Copy of execution objected to by plaintiffs because it contained neither testimonium, nor seal of court, nor even scrawl. Objection overruled, to which the plaintiffs then and there excepted).

11. Copy of judgment of Moses Austin against Alexander McNair and of execution, McNair against Austin, dated October 14, A. D. 1819.

P. 31, of Record.

(Copy of execution objected to by plaintiffs, because it contained neither testimonium, nor seal of the court, but only a scrawl, objection overruled, to which the plaintiffs then and there excepted).

12. Certified copy of deed of Moses Austin by the Sheriff to Charles R. Ross, agent for the bank of St.

Louis, dated March 21, 1820.

P. 32, of Record.

(Objected to by plaintiffs because it contained no seal by the sheriff, nor any seal of the court to the certificate of the clerk taking the acknowledgment. Also the sale by the sheriff objected to because it appeared from the judgment and the mortgage, that it was the sale of the same land on which the bank held a mortgage).

These objections were overruled, to which the plaintiffs then and there excepted.

13. Certified copy of a deed of the Bank of St. Louis to Charles R. Ross, executed by Risdon H. Price as President, and without a seal, dated —— day of April 1820.

P. 37, of Record.

(Objected to by plaintiffs, because it did not purport to be under the official seal of the bank as a corporation. Objecjection overruled; to which plaintiffs then and there excepted).

14. Certified copy of deed of Robert Simpson, Rufus Easton and Samuel Hammond, directors of the bank of St. Louis to Charles R. Ross, dated Dec., 21, 1820.

P, 39, Record.

15. Certified copy of deed of Charles R. Ross, to Risdon H. Price, dated Dec. 21, 1820.

P. 41, of Record.

16. Certified copy of deed of trust by Risdon H. Price to trustees of the Bank of Edwardsville, dated April 7, 1821.

P. 43, of Record.

17. Certified copy of deed of Ben Stephenson, T. W. Smith and R. T. McKenney trustees of the Bank of Edwardsville, on sale of interest of Risdon H. Price to Louis Devotion, dated June 19, 1822.

P. 47, of Record.

18. Certified copy of the appointment of W. H. Savage, as administrator of Louis Devotion, dated Oct.,31, 1822.
P. 52, of Record.

19. Certified copy of the petition of the administrator of Louis Devotion to sell land, and the orders thereon, dated Nov. 11, 1831.
P. 53, of Record.

20. Certified copy of deed by administrator of Louis Devotion to John Deane, dated May 26, 1835.
P. 63, of Record.

The defendants then offered in evidence the following in support of a claim of a second chain of title.

21. Certified copy of the deed of Moses Austin and wife to James Bryan and Rufus and Levi Pettibone, dated February 15, 1820, being the same deed offered by the plaintiffs and numbered 2 of this statement.
P. 66, of Record.

22. Certified copy of record in the case of Pettibone, *et al.* v. Risdon H. Price, *et. al.*, the same being a chancery proceeding in the County of St. Louis, embracing all the proceedings from the Bill to the Decree. Dated January 14, 1822.
Pp. 68, 89 of Record.

23. Certified copy of deed of Risdon H. Price and wife to William Milam, dated June 20, 1828.
P. 89 of Record.

24. Certified copy of proceedings of Estate of Rufus Pettibone, deceased, in the County Court of St. Charles County. Petition of Levi Pettibone for leave to sell real estate, and orders thereon, dated May 27, 1829.
P. 91 of Record.

25. Deed of the justices of the County Court of St.

Charles County to Levi Pettibone, dated November 25, 1829.

P. 98 of Record.

26. Certified copy of judgment against the Bank of St. Louis, in favor of John Smith, T., and execution, dated May 24, 1826.

P. 100 of Record.

27. Sheriff's deed for Mine a Breton, to John Smith, T., upon sale under said execution, dated August 10, 1826.

P. 102 of Record.

28. Certified copy of deed of John Smith, T., to William Milam, dated July 13, 1832.

P. 104 of Record.

29. Certified copy of deed of Levi Pettibone and wife, to William Milam, dated January 13, 1834.

30. Letter of Levi Pettibone to William Milam, dated January 13, 1834.

P. 107 of Record.

31. Certified copy of bill in equity, appointment of guardian *ad litem*, and decree in chancery suit. John Deane v. W. J. Bryan, *et al.*, in the Circuit Court of the County of Washington. Bill filed April 1, 1836. Final decree November 30, 1836.

P. 109 of Record.

(To which plaintiffs objected, because it appeared by the recitals in the bill that the sheriff's deed, the origin of title, was void for want of a seal or scrawl by the sheriff, and therefore Deane had no right to bring such a bill, having no title, and being in possession merely as a trespasser; and that by further recitals it appeared that the bill was taken as confessed against minors, and that judgment was entered against them without any proof being offered before the court, and was therefore void. These objections were overruled, to which the plaintiffs then and there excepted.)

32. Certified copy of bill in equity of John Deane v. William Milam, and agreement of arbitration and award of arbitrators.

P. 126 of Record.

(Objected to by plaintiffs as immaterial and irrelevant, and objection overruled and plaintiffs except.)

33. Certified copy of deed of William Milan to John Deane, dated November 8, 1841.

34. Deposition of Levi Pettibone, in which he testifies that the deed of Moses Austin and wife to James Bryan and Levi and Rufus Pettibone, dated February 15, 1820 (see p. 14 of Record), was, so far as the Pettibones was concerned, a security for a claim his brother had against Moses Austin, and that the claim was paid in 1829 or 1830; that Moses Austin's grant was from the Spanish Government in 1797, and he supposes Austin went into possession at once; that Risdon H. Price was in possession since about April, 1821; that witness had been in possession; that witness left St. Louis in 1820; that he had never paid any taxes on the property; that he had no knowledge of either his brother Rufus Pettibone, or James Bryan being in possession of the tract or paying taxes on it.

P. 131 of Record.

Attached to the deposition are these exhibits:

A. Deed of Moses Austin and wife to James Bryan and Levi and Rufus Pettibone, dated 15th February, 1820, conveying the Shaw tract, of six hundred and forty acres.

P. 134 of Record.

B. Deed of Elias Bates and wife to James Bryan and Levi and Rufus Pettibone, dated February 15, 1820, conveying the same property.

P. 135 of Record.

C. Extract from proceedings of the Bank of St. Louis regarding the Pettibone's interest in the Austin tract, allowing the Pettibones to share, *pro rata*, with the bank in the proceeds of the Mine a Breton property.

P. 136 of Record.

34. Deposition of Israel McGready, dated March 19, 1878. Testifies that he has lived at Potosi, Missouri, sixty years; was acquainted with Moses Austin, James Bryan, William Milam and Major John Deane; that when he came to this country Moses Austin was in possession, of Mine a Breton being the Moses Austin grant, survey No. 430; that it was sold by the sheriff March 22, 1820; that he does not remember who was next in possession; that the next one he remembers in possession was Risdon H. Price. He claimed the whole of the tract. He was succeeded by William Milam, who claimed all of the Austin survey. He went into possession about 1828. John Deane went into possession after William Milam. He claimed the whole of said tract known as the Moses Austin Survey No. 430, and went into possession during the year 1841. Held it until he sold to John Deane, Jr., who held the possession until his death in 1866, since which time it has been in the possession of the heirs of John Deane, Jr.

P. 138 of Record.

35. Deposition of Lyttleton W. Harris, of the same date, testifies that he has lived in Washington County fifty-one years; that when he came to this country Risdon H. Price was in possession of the property in question. He testifies substantially as the last witness in regard to the subsequent possession of the property.

P. 141 of Record.

36. Deposition of James Long, dated March 21, 1878, testifies that he has known the Austin Grant since 1852. That the property embraced in the present suit is worth from two hundred and fifty to three hundred dollars per annum above the amount required to pay taxes.

P. 142 of Record.

37. Deposition of George B. Cole, of same date, testifies that he has resided near Potosi, Mo., for fifty years, and has known the lands of the Austin Grant for that length of time; that when he first knew the land in 1828 William Milam was in possession. Witness testifies as to the subsequent possession down to the present day, substantially as the other witnesses have testified,

P. 143 of Record.

38. Deposition of John Teasdale, of same date, testifies that he has resided in Potosi, Mo., since fall of 1841; that he knows the lands generally known as the Austin Grant; that Major Deane took possession of the tract soon after witness came to the country. Witness testifies substantially as the other witnesses as to the possession down to the present day. He also testifies that six to eight hundred dollars per year would cover the rents on the property embraced in this suit, only one or two hundred dollars, after deducting taxes.

P. 144 of Record.

39. Parole proof that the sole heirs of John Deane, deceased, are Margaret B. Deane, Annie Deane, Fannie Deane, now wife of Bharles H. Mallory, and John B. Deane.

Which was all the evidence offered by the defendants.

The plaintiffs then offered in evidence in rebuttal the following:

40. Certified copy of extract from the minutes of the Circuit Court of Washington County, under date of "August 23d, 1823, showing that on that day "personally

"appeared in open court Andrew Miller, late deputy of "Daniel Dunklin, late Sheriff of Washington County, and "affixed his seal to an instrument of writing purporting to "be a deed conveying Moses Austin's title to the Mine a "Breton tract of land to Charles R. Ross, and thereupon "acknowledged the execution of said deed to be his act and "deed for the purposes then mentioned."

41. Certified copy of deed by the sheriff to Charles R. Ross, agent for the Bank of St. Louis, as recorded July 12, 1825, with minutes of court attached. This being the same deed introduced in evidence by the defendants as appears on p. 33 of the Record.

The foregoing was all the testimony in the case. The court then, of its own motion, gave to the jury the instruction hereinbefore recited.

(To the giving of which instruction the plaintiffs then and there excepted.)

And the jury thereupon rendered a verdict for the defendants.

Afterwards the plaintiffs filed a motion to set aside the verdict and for a new trial, which motion was by the court below overruled, to which action of the court, in the overruling of said motion, the plaintiffs then and there excepted.

And the plaintiffs bring the action into this Hon. Court by writ of error.

BRIEF.

I.

Moses Austin had no title in the league square, known as the Mine a Breton Survey, which could be subjected to levy and execution.

The grant of Morales to Austin was absolutely void having been made by the Spanish Authorities after the 1st of October, 1800, and the concession being void, there was no equity to levy on.

By the treaty of St. Ildefonso, made on the 1st of October, 1800, Spain ceded Louisiana to France; and France by the treaty of Paris, signed the 30th of April, 1803, ceded the same territory to the United States.

It has been held by this Honorable Court that the Act of Congress of the 26th of March, 1804, which annulled all grants of lands included in the above treaties, made subsequent to the treaty of St. Ildefonso, and declared them "*to have been from the beginning, null, void, and of no effect in law or equity*," "was obviously intended to act on all grants "made by Spain after her retrocession of Louisiana to "France, and without deciding on the extent of that retro-"cession, to put the titles which might be thus acquired "through the whole territory, whatever might be its ex-"tent, completely under the control of the American gov-"ernment * * * * * It annulls all grants for lands "in the ceded territories, the title whereof was at the date "of the treaty of St. Ildefonso in the Crown of Spain."

Foster & Elam v. Neilson, 2 Peters 253.

Affirmed in

Garcia v. Lee, 12 Peters 511.
United States v. Reynes, 9 How. 127.
Samev. D'Anterive, 10 How. 609.
Same v. Pa. & New Orleans, 11 How. 609.
Montelet v. United States, 12 How. 47.
United States v. Lynde, 11 Wall. 633.

"There was one point made in the argument of this case, "which from its general importance, merits our serious at-"tention, and which may have entered into the views of the "Circuit Court in making their decision. It was, whether, "admitting this grant to be void, innocent purchasers without notice holding under it, should be affected by its nullity?

"This would seem to depend on the question whether we "shall, as to innocent purchasers view it as a void or voidable "grant.

"On general principles, it is incontestible, that a grantee "can convey no more than he possesses. Hence, those who "come in under the holder of a void grant, can acquire "nothing."

Polk's Lessees v. Wendell, 5 Wheat. 293.

Approved in

U. S. v. Arredondo, 6 Peters 731.

Sampeyrac *et. al.* v. U. S. 7 Peters 241.

II.

If it so be that the act of April 12th, 1814, did by its terms embrace the void Morales grant, then it could only confirm to Moses Austin the equitable title to the lands, and as no Patent has ever issued to the lands the legal title still remained in the government until the act of February 14th, 1874.

Now no possession however long continued could be any bar to the right of Austin or his legal representatives to recover the lands, so long as the legal title still remained in the government, if they were unlawfully deprived of their possession.

"But the Act of 12th April, 1814, not only provides "for an order of survey, and a certificate of confirmation "that makes the completion of a title by the issuing of a "patent to depend upon the commissioner of the general "land office being notified that the certificate of confirmation "was fairly obtained. * * * * To construe this Act "so as to make it operate a confirmation by its own terms, "without regard to the action of the Land Department, "would be to substitute the action of the judiciary for the "action of the executive department, which the Act evi-"dently designed to entrust with the examination and com-"pletion of the title. Such construction would be repug-"nant to the obvious design of the Act."

Papin v. Hynes, 23 Mo., 274.

III.

The claim of Moses Austin was not confirmed by the Act of April 12, 1814.

That Act at best passed an equitable title only to the confirmee, the legal title remaining in the United States until the requirements of the Act itself in regard to a patent had been complied with. But even the equitable title passed only to the persons under the restrictions and in the manner prescribed by the Act itself, and the claim of Moses Austin was by the adverse opinion of the Board of Commissioners expressly excluded from the class of cases confirmed by that Act.

The claim of Moses Austin to the lands embraced in the void ~~said~~ Morales grant, was presented to the old Board of Commissioners, and by the board rejected because it was not a grant made and completed before the treaty of St. Ildefonso.

In the case at bar, the following is the record of the action of the Board of Commissioners.

"December 11, 1811, present a full Board. A majority "of the board ascertain that the title is not a grant made "and completed prior to the 1st October, 1800. Frederick "Bates, commissioner, forbears giving an opinion."

American State Papers Vol. 2, 554, also Vol. 3, 582.

This court has declared that "the Act of 12th April, "1814, (3 St. at Large 121) confirmed those claims only "which had been rejected by the Recorder upon the ground "that the land was not inhabited by the claimant on the 20th "of December 1803."

"Where it did not appear by the report of the Recorder "that a claim was rejected upon this specific ground, this "act did not confirm it."

(Syllabus.")

"This confirmation is claimed under the first (second) "section, which confirms all claims where it appears from "the report of the Recorder that it was rejected merely "because the land was not inhabited by the claimant on the "20th of December, 1803. But it is very clear that this "act does not embrace it. The report of the Recorder does "not place its rejection merely on that ground. * * * * * * * The act of Congress does not confirm all "claims when this fact existed and could be proved, but "those only in which it appeared in the face of the report "that the want of this proof was the sole cause of its "rejection. This must appear in the written report of the "Recorder to bring it within the provisions of this act, and "cannot be supplied by other evidence, and as it does not "so appear in the present case, the act of 1814 does not "embrace it nor confirm it.

Burgess v. Gray, *et al.*, 16 How. 48.

IV.

It was an essential requisite to the validity of an execution issuing out of the Superior Court that it should be *under the seal of the court* and that seal must be "*a seal purporting to be the seal of the Superior Court for the circuit.*"

An execution issuing without such seal was an absolute nullity, and would be no warrant or protection to a sheriff attempting to proceed thereunder.

For the better understanding of this question, the laws establishing the Superior Court of the Territory of Missouri, and defining its powers and jurisdiction are here given. This court was purely statutory having no common law forms or jurisdiction, as the common law of England had not then been adopted as the law of the territory.

ACT OF CONGRESS JUNE 4, 1812.

(2 Stat. at Large, 746).

"Section 10. And be it further enacted that the judicial "power shall be vested in a Superior Court, and in Inferior "Courts and justices of the peace. The judges of the Superior Court and justices of the peace shall hold their offices "for the term of four years, unless sooner removed. The "Superior Court shall consist of three judges who shall "reside in the said territory any two of whom shall constitute a court; the Superior Courts shall have jurisdiction in "all criminal cases, and exclusive jurisdiction in all those "that are capital; and original and appellate jurisdiction in "all civil cases of the value of one hundred dollars; the said "judges shall hold their courts at such times and places as "shall be prescribed by the general assembly. The sessions "of the Superior and Inferior Courts shall continue until all "the business depending shall be disposed of, or for such "time as shall be prescribed by the general assembly. The "Superior and Inferior Courts shall respectively appoint "their clerks, who shall be commissioned by the Governor, "and shall hold their offices during the temporary Government of the said territory, unless sooner removed by the "court."

The Act of the Territorial Legislature of January 19, 1814, provided in section 1, the times and places of holding courts.

Section 2, made it the duty of the Judges of the Superior Court, on the first day of their first term of holding court, to appoint a clerk in each county, and continued:

> "And the person so appointed as aforesaid shall, within "six months from his appointment, or sooner, if possible, "under the direction of the judges of the said court, procure "a public seal, which seal shall be styled the seal of the "Superior Court of the Territory of Missouri, for the county of ——— (naming the county,) *and all writs and processes issuing out of said court, in any county, shall be under the seal of the said court for the proper county.*"

Territorial Laws of Missouri, Vol. 1, 335.

The Act of January 4, 1815, divides the territory into two circuits, the "northern" and the "southern."

> "The counties of St. Charles, St. Louis, and Washington, "shall compose the northern circuit."

Territorial Laws of Missouri, Vol. 1. 346.

The Act of January 21, 1816, provides that the Superior Courts shall hereafter hold two terms annually in each of the circuits; makes it the duty of the judges to appoint a clerk of the superior court in each circuit, the court for the northern circuit to be held in the town of St. Louis, in the county of St. Louis, and further provides:

> "Section 11. It shall be the duty of each of the clerks to "be appointed under this law, to procure a seal, purporting "to be the seal of the Superior Court for the circuit in which "they shall be appointed."

Territorial Laws of Missouri, Vol. 1, 448.

The Act of December 23, 1818, divides the Territory into three circuits; provides that the Counties of St. Charles, Franklin, Washington, Jefferson and St. Louis shall form the northern circuit; that the Superior Court shall hold two terms annually in each circuit: "For the Northern Circuit "at the town of St. Louis on the Fourth Monday of April "and the Third Monday of September;" that the judges shall appoint a clerk for the new Northwestern Circuit; by Sec. 7 "that it shall be the duty of the clerk appointed, as "aforesaid, and every other clerk of the Superior Court, "who has no official seal, to procure a seal purporting to be "the seal of the Superior Court of the circuit of which he is "clerk on or before the first day of August next, and if he "neglect, fail or refuse so to do, he shall be fined in a sum "not exceeding fifty dollars, at the discretion of the court "for which he is clerk for the use of said territory."

And further says:

"Section 11. All Acts and parts of Acts heretofore "passed and now in force in respect to Superior and Circuit "Courts, their judges, clerks and other officers, and not repug "nant to or inconsistent with the provisions of this Act, "shall be in force as to the courts hereby established, their "judges, clerks and other officers, and their respective pow- "ers, duties and rules of proceeding shall be the same, etc."

Territorial Laws of Missouri, Vol. 1, 616.

No other law for the government of the Superior Court was enacted by the Territorial legislation prior to the judgment.

V.

The executions issued from the Superior Court, and under which the sheriff made sale of the Mine a Breton Survey under judgments against Moses Austin, were without seals, (see p. 34 of Record) and therefore void, for the statute creating these statutory courts required executions to issue under seal.

A levy of a void execution must be a void levy, and a sale under such a levy of such an execution could hardly avail to pass any right or title to a purchaser; especially when as in this case, the levy was made upon lands which the judgment ~~creditor~~ debtor only held by a void concession.

"The Supreme Court of the United States in Le Bois v. "Brammell, 4 How. 462, and in Menard v. Massey, 8 How. "307, distinctly declare, that until an inchoate title, originating under the Spanish Government has been con-"firmed, 'it has no standing in a court of law or equity.' "This language was used in cases where the claimants had "formal concessions from the Lieutenant-Governor, and "will certainly apply with as great force to a claim which "rests upon a settlement made upon the domain by the per-"mission of the Spanish officers."

Burgess v. Gray, *et al.*, 15 Mo. 220.

This court has also fully discussed and settled this question in

Insurance Co. v. Hadlock, 6 Wall. 73.

VI.

The sale by the sheriff of the Mine a Breton survey, was furthermore a void sale for the reason that it was an attempt by the Bank of St. Louis, by means of a suit at law, and by judgment, execution, levy and sale thereunder, to deprive a mortgagor of his equity of redemption, and of his rights under the mortgage contract.

Such a sale as that made by the sheriff of October 1, 1819, even if Moses Austin had a title which was subject to levy and execution, could not even convey the equity of redemption.

In 1820 in a case in Missouri, under the same laws which govern the case at bar, McNair executed three mortgages to Mullanphy upon various tracts of land to secure indebtedness of about ten thousand dollars. In 1823 Mullanphy commenced an action of debt to recover the sum secured. Recovered judgment at law July 12, 1824. Execution was issued and levied on all the mortgaged property. It was sold on the execution on the 13th Dec. 1824, and Mullanphy bought it in. One of the mortgages was subsequently foreclosed, but judgment was never carried into effect. The other two mortgages were never foreclosed.

The Supreme Court of Missouri says:

"The statute of 1807, concerning the foreclosure of mort-"gages in force when the sale took place, which is now the "subject of consideration, conferred on the mortgagor rights "of some importance, of which he was deprived by selling "his equity of redemption, at the suit of the mortgagee, "for the mortgage debt. That statute in proceedings to "foreclose, required twenty days service of process before "the return day, whereas in ordinary proceedings at law, "service fifteen days before the return term was sufficient. "Moreover, the statute directed that the sale of the mort-"gaged premises should be at least nine months from the "commencement of the process of foreclosure. The stat-"ute, in declaring that the sale should be postponed at least "nine months from the commencement of the suit, did not "intend that that should be the precise period at which the "sale should take place, but from the manner in which it is "worded, it is clear that the court had a discretion, and "might, and no doubt would, upon showing sufficient cause, "extend the time. All that was required was, that the sale "should not take place in less than nine months; if that "time was prolonged by the court there was nothing in the "statute to prevent it. In proceedings to foreclose mort-"gages in England, nothing was more usual than to extend, "from time to time, the right to redeem. In the ordinary "course of proceedings, lands might be sold in less than "nine months, and this actually occurred in this cause.

"The method of procedure adopted by the mortgagee, de-"prived the mortgagor of advantages secured to him by "law; we are, therefore, of the opinion, that the sale was "void."

McNair, *et al.* v. O'Fallon, *et al.*, 8 Mo. 188.

"So a sale made on process issued on a void judgment, "from whatever cause the judgment is void, is also void."

Rorer on Jud. Sales Sec. 880 p. 341.

"The District Court erred in overruling the evidence of-"fered by the defendant, to prove fraud in the judgments, "executions, sheriff's sale and sheriff's deed.

When a judgment is brought collaterally before the court "as evidence, it may be shown to be void upon its face by "a want of notice to the person against whom the judgment "was entered, or for fraud."

Webster v. Reid, 11 How. 437.

Vide also.

Harshey v. Blackmarr, 20 Iowa 161.
Albee v. Ward 8 Mass, 79.

"When a defendant in ejectment claims title under a "judgment and execution, and the court did not have juris-"diction to render such judgment, then all the proceedings "were *coram non judice* and void, and can be attacked col-"laterally in the action of the ejectment."

Miller v. Handy, 40 Ill., 448.

Vide also

Hollingsworth v. Bagley 35 Tex. 345.
Herman on Executions Sec. 141, p. 190 and cases there cited.

VII.

The sheriff's deed to Charles R. Ross for the Bank of St.

Louis, having no seal, is therefore void, and the court erred in admitting the same in evidence.

At the time the deed of the Sheriff was made the law with regard to such sales was as follows.

"When lands and tenements shall be taken in execution "by the Sheriff it shall be his duty to expose the same to sale "at the Court House door on some day while the courts of "common pleas or quarter sessions in the district are in session "having previously given twenty days notice of the time and "place of sale, and what lands and tenements are to be sold, "and where they lie, by at least six hand bills affixed in the "most public places in different parts of the district. And "upon such sale the sheriff shall make return of the writ, together with a copy of the advertisement put up as aforesaid, "and give the buyer a deed duly executed and acknowledged "in court, for what is sold; which deed shall recite the execution purchase and consideration, and shall be effectual for "passing to the purchaser all the estate and interest which "the debtor had or might lawfully part with in the lands at "the time the judgment was obtained."

Territorial Laws of Missouri, Vol. 1. Sec. 45, 120.

"We have, then, to deal with a case in which the fact is "found that a conveyance made by a sheriff for land sold on "execution was not sealed. The statutes have always required such conveyances to be by deed, that is under the "seal of the officer." * * * The statutes, since 1807, "have contained provisions for the completion of sales and "the execution of conveyances by sheriffs, where there has "been a change in the officer, and these statutes furnish the "remedy to be applied in such cases, and not the power of "a court of equity. Courts of equity do not carry into effect "by their decrees, the incomplete execution of statutory "powers."

Moreau v. Detchemendy, 18 Mo. 522.

"Now, it is a well settled doctrine, that although courts of "equity may relieve against the defective execution of a "power, created by a party; yet they cannot relieve against "the defective execution of a power created by law, or dispense with any of the formalities required thereby for its "due execution."

Bright v. Boyd, 1 Story 478.

The defendants have admitted by their testimony, in the recitations of the Record of the bill in equity to reform the said void deed, introduced by them in evidence, that the said deed is "*an instrument in writing without seal or scroll.*"

(P. 172 of the Record.)

"In this case a stronger objection is interposed by the "statement in the answer of the principal defendants, that " 'the sheriff by mistake omitted to seal the deed so as to " 'make it sufficient to pass the legal title.' A court would "hardly be justified in presuming the existence of a material fact against the express admissions of a party that it "did not exist, and any presumption that might be indulged, "from the evidence in this case, that the instrument was "sealed, is overcome by the positive statement in the answer "of the parties invoking the presumption that it never was "sealed."

Moreau v. Branham 27 Mo. 351.

"And it is settled in this state that two things are "equally necessary under the statute to constitute a good sealing by the use of a scrawl; first that it should be so expressed on the face of the instrument, and second, that a "scrawl by way of seal should be affixed."

Moreau v. Detchemendy, 41 Mo. 431.
Grimsley v. Riley, 5 Mo. 280.
Walker v. Kiler, 8 Mo. 301.

"The unsealed writing was not such a conveyance as "would pass the title, Ramsey acted as a public agent in the "execution of a statutory power, and to render his acts as "such operative, it was necessary that he should have complied with the law."

Harley v. Ramsey, 49 Mo. 309.

VIII.

The deed of the sheriff to Ross for the Bank of St. Louis, (p. 36 of the Record,) having no seal to the clerk's certificate is, therefore, void, and the court erred in admitting the same in evidence on *that* ground.

The requirement of the law with regard to the certificate of the clerk at the time this deed was made, was as follows:

"It shall be the duty of the clerks of the several courts "in this Territory, to endorse upon every deed acknowledged by any sheriff, a certificate of such acknowledgment, *and under seal of the court*, and to enter on the "minutes a description of the lands and tenements sold, the "purchase money, and the names of the parties to the suit."

Territorial Laws of Missouri, Vol. 1, sec. 47, 121.

"There was no error in refusing the instruction asked by "the plaintiff in relation to the effect of the sheriff's deed "to Clark. That deed was not acknowledged in court as "the 45th section of the act of 1807 required; it was not "effectual as an instrument until it was so acknowledged, "and Clark acquired no interest in any land under it. The "conveyance of lands by a sheriff on a sale under execution is a statutory power, and the statute must be pursued, "otherwise the conveyance cannot pass title. We have held "that a sheriff's deed not under seal would not convey a "title; so also that a defective execution of a sheriff's deed "could not be aided by a court of equity."

Allen v. Moss, 27 Mo. 354.

"In that case [Allen v. Moss, 27 Mo. 354] the sheriff's "deed to Clark was held to be ineffectual to transfer to him "any interest in the land.

"In this case an attempt has been made to cure that defect by showing an entry in the minutes of the court made "about five months after the date of the deed, and which is "copied in full in the statement, and also an endorsement on "the deed of the acknowledgment, which endorsement was "made by the Clerk of the St. Louis Circuit Court on the "15th day of December, 1863. The statute in force at the "time (T. L., p. 120, 1), required the sheriff to "give the "buyer a deed duly executed and acknowledged in court," "which would be effectual to pass title to the purchaser, and "required the clerk "to endorse upon every deed acknowledged by any sheriff a certificate of such acknowledgment "and under the seal of the court, and to enter in the minutes a description of the lands and tenements sold, the "purchase money, and the names of the parties to the "suit." * * * * The Circuit Court, therefore, did "not err in declaring that the deed was not acknowledged in "court, and that it was inoperative."

Allen v. King, *et al.*, 35 Mo. 217.
Adams v. Buchanan, *et al.*, 49 Mo. 64.

"The transcript from the record of the deed shows an in-"dorsement of a certificate of acknowledgment, made six "years after the execution of the deed, but the certificate is "not under the seal of the court, and it purports that the "sheriff executed and acknowledged the instrument, when "the deed was in fact executed by his deputy.

"There are other irregularities not necessary to be "noticed, as the acknowledgment and certificate are so "clearly defective, that the only question to be considered "pertains to the validity of a sheriff's deed when not "acknowledged or certified. * * * *

"The legal acknowledgement of a sheriff's deed is essen-
"tial to its validity. No title can pass without it."

Ryan v. Carr, 46 Mo., 483.

"An original sheriff's deed was introduced by defendants
"bearing date November 24, 1823. * * Among other objec-
"tions to this instrument was one that the certificate of the
"sheriff's acknowledgment in open court was not attested
"by the clerk's official seal. Testimony of experts was in-
"troduced to establish the absence of a seal, and upon the
"issue of fact, as it appears, the court found that no seal
"existed. Upon such a finding the deed was properly ex-
"cluded from the consideration."

Hammond v. Coleman, 4 Mo., App. 307.

In January, 1879, the Supreme Court of Missouri, while it reversed the opinion of the Court of Appeals in the above case and rendered judgment for the plaintiff, sustained the lower courts upon the point cited above, and gave judgment for the plaintiff upon the ground that such a deed as was offered and excluded was void, and could convey no title. This case has not been reported.

IX.

The deed of Risdon H. Price to Charles R. Ross, is wholly inoperative and void to convey any title.

1. It purports to convey the interest of the Bank of St. Louis, in the Mine a Breton survey. If it were a valid deed it could not convey a title which the Bank did not have, and as has already been shown in points VI. and VII., the Bank acquired nothing throngh the void deed of the sheriff.

2. The deed purports on its face, if it were otherwise valid, to convey only the individual interest of Risdon H. Price.

"The doctrine is well settled, in relation to *solemn instruments under seal*, that the principal will only be bound "where he is both in form and substance the contracting "party. It must be *his* deed. If it be the deed of the "agent only, it will neither pass the title of the principal, "nor bind him as a covenantor."

Townsend v. Corning, 23 Wend. 435.
Vide also Wood v. Goodridge, 6 Cush. 117.
Thurman v. Cameron, 24 Wend. 87.

"The addition to his name of the words "Attorney of "Henry L. Sheldon" was a mere *descriptio personae*. The "fact that in truth he was the attorney or *procurador* of "Sheldon cannot, by the the most liberal interpretation, "impart to the instrument executed by Chase the character "of a conveyance by Sheldon. Chase might as well have described himself as of any other profession or occupation "belonging to him as that of attorney of Sheldon."

Echols v. Cheney, 28 Cal. 157.
Vide also Harper v. Hampton, 1 Harr. & J. 709.
Elwell v. Shaw, 16 Mass. 42.
Barger v. Miller, 4 Wash. C. C. 280.
Bobb v. Barnum, 59 Mo. 395.
American Jurist, and cases cited, Vol. 3, 71 to 85.

3. The deed not being under the corporate seal of the Bank of St. Louis, is void.

This point has long since been passed upon by the Supreme Court of the State of Missouri, in a case which was decided at the May Term 1826.

Price claiming title in himself under the deed from Ross to Price, dated December 21st, 1820, (p. 41, Record.) "Sued Perry and Ruggles in ejectment for 250 acres of "land, part of a tract known by the name of the Mine a "Breton tract, and had judgment for $8,000, from which "judgment this appeal is taken." Price in that case set up the same chain of title which the defendants, in the case at bar, his grantees, plead here.

Perry and Ruggles claimed "by a deed from Moses Aus-"tin to James Bryant and Martin Ruggles, dated 28th Au-"gust, 1819, and by a deed from Bryant to William and "John Perry, dated 13th December, 1821."

The court discussed at length the objections to the deed of Price to Ross, (p. 37 of this Record,) and says: "The tes-"timony in this case proves as satisfactorily as a negation "can be proved, that the Bank, at the time of the execu-"tion of the deed to Charles R. Ross, *had no seal*. The "deed, in the opinion of the court is *void*."

Perry and Ruggles v. Price, 1 Mo. 646.

Price then acquired nothing by the deed of Ross, for Ross' foundation of title was a void deed, and he could convey no title to these defendants.

This court says:

"On general principles, it is incontestible, that a grantee "can convey no more than he possesses. Hence those who "come in under a void grant, can acquire nothing."

Polk's Lessees v. Wendell, 5 Wheat. 393.

The law incorporating the Bank of St. Louis, referred to by the court in the case of Perry and Ruggles v. Price, *supra*, was passed by the Territorial Legislature, August 21, 1813, and the following provisions, pertinent to this point are found therein.

"Sec. 1. * * * * * and they and their successors "and assigns may have a common seal, and may make, "change, and alter the same at their pleasure; and also that "they and their successors and assigns, *by the same name* "*of the President, Directors and Company of the Bank of* "*St. Louis*, shall be in law capable of purchasing, holding

"and conveying any estate, real, personal or mixed, for the "use of the said corporation."

Territorial Laws of Missouri, Vol. 1, p. 278.

If Price's title was not good enough to enable him to recover upon, surely in his grantees it cannot be good enough to enable them to defend.

X.

It follows then that Price, holding under a void deed, and having no title, could convey none. Deane could acquire none through such a chain of title, and Deane having no title, it was incompetent for him to bring a bill in equity asking a title which he had not and which "had no foundation in law or equity," to be decreed into him.

Moreover, he declares by his bill that he has no standing in court, for the bill says that the foundation of his title is no foundation at all, that it is an *instrument of writing without seal or scroll* by the sheriff, executed by his deputy.

"It is obvious that he can have no standing in a court of "equity, nor be entitled to the relief prayed for *until he es-"tablishes his title, and that cannot be done without showing "a deed from the sheriff.*"

Hiney v. Thomas, 36 Mo., 377.

"The deed void upon its face, however it may be at-"tempted to be used, carries its own condemnation. No "want of notice can enable the grantee to convey a good "title."

Elliott v. Piersol, 1 McLean, 11.

When complainant himself has no title, or a doubtful title, he cannot have relief.

"He who comes into equity to get rid of a legal title which "is alleged to overshadow his own title, must show clearly "the validity of his own title, and the invalidity of his op-"ponent's."

Banks v. Evans, 10 S. & M., 62; also Huntington v. Allen, 44 Miss., 654.

"It is true when a party applies for any equitable relief "in aid of his title to real estate, that courts of equity must "be satisfied the complainant has a legal title before granting "relief."

Low v. Staples, 2 Nev., 209.

XI.

The service by publication on the non-resident minors in the bill of equity of Deane vs. Bryan, et al., offered in evidence by the defendants was unwarranted by law, and was consequently no service at all. The court acquired no jurisdiction over them and had no power to appoint a guardian *ad litem*.

The laws governing the practice of the courts in the State of Missouri at that time distinguished very particularly between the practice at law and in equity.

On the 7th March, 1835, the Legislature of Missouri passed an Act entitled, "An Act to regulate the practice in Courts of Chancery."

Article I of this Act is entitled, "Of the commencement "of suits, the service and return of process."

This article provides how process shall be served on resident or non-resident defendants, but nowhere makes any provision whatever for service upon non-resident minors.

Rev. Stat. Mo., 1835, p. 906.

On the 17th day March, 1835, just ten days later, the legislature passed an Act entitled, "An Act to regulate the practice at law."

Of the Act also, Article 1 is entitled, "Of the commence-"ment of suits, and the service and return of process and "notices." It begins as follows:

"Section 1. *Suits at law* may be instituted in courts of "record," etc.

Article II. is entitled, "Of proceedings by and against "bail, and infants."

In no part of this Act is any provision made for service upon non-resident defendants by publication.

Act II. further provides:

"Section 24. After the commencement of a suit against "an infant defendant, *and the service of process upon him*, "the suit shall not be prosecuted any further until a guard-"ian for such infant be appointed."
Rev. Stat. Mo., 1835, p. 450.

XII.

It appears (see page 123) that John Brickey was on the 27th day of July 1836 appointed by the Circuit Court sitting in Chancery, as guardian of William Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry and a child whose name was unknown of the said Emily Perry, infant defendants to defend the suit and consented to act as such.

And on page 125 of the record it appears that the said John Brickey *consented that the allegations of the bill might be taken as confessed against the non-resident minor defendants*, whom the court had appointed him to defend, and that the decree was rendered accordingly.

In a case which was a complaint in the nature of a bill in equity to correct an alleged mistake in a deed of conveyance executed by one Clary, Clary having died the suit was brought against his infant heirs and pending the proceeding a stipulation with reference to certain proof was entered into between the complainant and the guardian *ad litem*.

In speaking of the effect of this stipulation, the Supreme Court of New York says:

"Both the attorney for the guardian and the referee grossly "mistook their powers and duties.

"The facts which will entitle the plaintiff to a judgment "must be established by legal proof. Neither the guardian "*ad litem*, nor any other person has power to waive this "proof, nor any right without it to consent to a judgment. "This is a rule of law that cannot be evaded.

"It may be thought that the guardian's responsibility to "the infants is an answer to these objections. This is no "reason why judgment should be given against them with-"out proof. As well might it pass without any investiga-"tion at all, upon a tender of indemnity for the injury it "might work to their rights. The guardian erred in com-"miting the interest of these infants exclusively to an attor-"ney, who seems to have acted under the idea that a guar-"dian was appointed for the convenience and facility of the "plaintiffs and not for the protection of the defendants."

Litchfield v. Burwell 5 How. P. R. 341.

In the case under consideration the guardian *ad litem* (who elsewhese in the record appears to have been the recorder) seems to have considered the appointment of an attorney unnecessary, and he too, to quote the language of the Supreme Court of New York, "seems to have acted un-"der the idea that a guardian was appointed for the con-"venience and facility of the plaintiff, and not for the pro-"tection of the defendants."

In commenting upon the foregoing case the Supreme Court of Missouri says:

"There can be no doubt of the correctness of this ruling, "Courts of Chancery have always regarded infants as the "especial objects of their care and protection and will never "permit a guardian *ad litem* to do any act or make any "admission, or enter into any agreement or stipulation "which tends in any degree to prejudice or compromise their "rights."

Revely v. Skinner 33 Mo. 98.

"The rule under the old practice which requires that the "facts upon which a plaintiff relies for judgment against in-"fant defendants must be established by legal proofs, is not "abrogated by our present code.

Do. Do.

Vide also.

McClure v. Farthing, 51 Mo. 109.
Holden v. Hearn, 1 Beav. 445; 3 Jur. 428.
Massie v. Donaldson, 8 Ohio 377.
Mills v. Dennis, 3 John. Ch. 367.
Walton v. Coulson, 1 McLean 125.
Affirmed by this Hon. Court in 9 Peters 62.
Dow v. Jewell, 21 N. H. 486.
Newins v. Baird, 19 Hun. 306.
Heath's Adm'r v. Ashley's Adm'r 15 Mo. 393.

XIII.

No decree can be taken against a minor on his own admissions or those of his guardian *ad litem*, but as against him every allegation of the bill or petition must be duly proved.

A decree so made is no decree at all, and is invalid and incompetent to bind the interests of minor defendants to their detriment.

See Ewell's Leading Cases, 235, and the long list of cases there cited in support of this position.

The decree is wholly invalid for the further reason that it is apparent from the bill itself that the aid of the Chancery Court was sought to accomplish that which even chancery can not do. Chancery can not create life, nor galvanize the dead, nor render valid that which is utterly void *ab initio*.

"We have held that a sheriff's deed not under seal would "not convey a title ; so also that a defective execution of a "sheriff's deed could not be aided by a court of equity."

Allen v. Moss, 27 Mo., 354.

"Courts of equity do not aid the defective execution of "statutory powers."

Wannall v. Kem, 51 Mo., 150.

"An affirmance of the right to relief in this case would, "in effect, overthrow the principle that courts of equity will "not relieve against a defective execution of a legal or stat-"utory power. A consequence which no one can contem-"plate without being struck with the inconvenience which "may follow from it. * * * * The same principle is "recognized in the case of Moreau v. Detchemendy, (18 "Mo., 522,) *and applied to a deed executed by a sheriff. In "this last case the instrument was inoperative for want of a "seal. There can be no substantial difference between a void "instrument which has a mere physical existence and no deed "at all.*"

Speck v. Wohlien, 22 Mo., 310; see also Miller v. Powell, 53 Mo., 252.

"A sheriff in sales of land on execution, acts in the exer-"cise of powers conferred on him by statute, and no court "except the court under whose process he acts, can super-"vise his proceedings. * * * * It is a well settled "principle which needs no illustration or citation of authorities, that a court of equity cannot aid the imperfect "execution of a statutory power."

Ware v. Johnson, 55 Mo., 500.

Had the proceedings in the judgment and sale of the Mine a Breton survey been otherwise regular, there is another very serious objection to the sale under the execution, in that a large and valuable tract of land was sold *en masse*, to satisfy the executions, the justice and expediency of which the defendants have not attempted to show.

It appears that Moses Austin was in possession of about six thousand acres of land included in said survey.

Of this, six hundred and forty acres were mortgaged to the Bank of St. Louis for a debt of about fifteen thousand dollars.

Price himself subsequently recovered of Perry and Ruggles, a judgment for eight thousand dollars for trespass upon two hundred and fifty acres of the survey.

It is then a very fair inference, at least, that the value of the whole survey was vastly in excess of the judgment debt.

Yet the whole of the survey was sold by the sheriff under the executions, for about seven thousand dollars,—a less sum than the purchaser afterwards recovered for trespass upon two hundred and fifty acres of the tract.

These facts and figures appear in the record of the proceedings, and of the bill in equity of Deane v. Bryan, offered in evidence by the defendants, which they introduced without any attempt at justification. And it further appears from the said Bill in Equity that no money was advanced or paid for said sale and purchase.

"The selling under execution of several parcels of land "in one bid, and of putting up for sale a whole tract, when "some portion of it could be sold to satisfy the judgment, "is uniformly condemned by courts as tending to the sacrifice of property and the oppression of the debtor, *a sale so "made is prima facie void* whether on ordinary judgment or "on a decree of foreclosure. He who seeks to maintain "such a sale must show its justice and expediency."

Herman on Executions, Sec. 223 p, 349; and cases cited.

Vide also.

Kinny v. Noble, 51 Ill. 121.
Gearheart v. Tharp 4 B. Monroe 35.
Isaacs v. Gearheart, 12 B. Monroe 231.

The levy was furthermore a void levy for uncertainty, the only description of the property in the levy being "the property of Moses Austin of, in, and to the tract of land lying "and being in the County of Washington on Mine Creek, "adjoining the village of Mine a Breton being one league "square."

The advertisement offers for sale the "interest of Moses Austin to his Mine a Breton tract of land."

These two instruments are copied in the deed and furnish the only description of the property set forth therein.

Vide Rorer on Jud. Sales, 2nd Ed. Sec. 886, p 343.
Clemens v. Rannells, 34 Mo. 579.
Childs v. Ballou, 5 R. I. 537.

It furthermore appears by certain descriptions of exceptions in the levy, that some portion of the tract of land had been laid off into streets and lots, and sales made to other parties, a levy and execution sale of a tract of land as an entirety under such circumstances is void.

Henry v. Mitchell, 32 Mo. 512.

Under a sale made upon three executions together, one being void, it was held that the sale was void as to all, "the "land having been sold upon all three of the executions, "and one of them, being the first to be satisfied, having im-"providently issued, being thus based upon an imperfect "record, the sale was thereby rendered invalid."

Brown v. McKay, 16 Ind. 484.

Vide also cases there cited.

No presumption by lapse of time can be invoked in favor of the deed either at common law or by statute.

"If the law then in force regulating conveyances has not "been complied with, how can we presume that a deed has "been regularly executed, when we see from the very in-"strument produced in whose aid the presumption is sought, "that the law in almost every particular has been violated? "can we presume that the law has been complied with when "we see from the very face of the deed, that it has not been?

"When an instrument itself tells us that the law has not "been observed in its creation, how can we, from length of "time or any other consideration, say that it has been? "Can a presumption in favor of a deed arise when the deed "itself tells us that such a presumption is false?"

Reaume v. Chambers, 22 Mo., 53.

The Statute in force at the time the void judgment was rendered provided that judgments should be a lien on real estate for five years only.

"And no judgment hereafter entered in any court of re-"cord within this territory shall continue a *lien* on the lands "and tenements of the person against whom the same has "been entered during a longer term than five years from the "first return day of the term of which such judgment may "be entered" etc.

Ter. Laws of Mo. Vol. 1. part of Sec. 41 p. 119 Act of July 3, 1807.

Whatever lien therefore may ever have existed has long since expired.

The mortgage debt also has ceased, by operation of law, to have any existence. It has been paid by the common law presumption of payment.

The statute allowing defectively acknowledged deeds recorded thirty years to be admitted as evidence, does not apply to invalid sheriff's deeds, for they are void *ab initio*, and equity even cannot take jurisdiction to reform or validate them.

"Neither the deed to Chouteau, nor the will, can be ad-
"mitted without proof, as an ancient instrument. The rule
"embraces no instrument which is not valid upon its face,
"and which does not contain every essential requirement of
"the law under which it was made. Neither the deed nor
"the will comes within the rule, and we think the court very
"properly excluded them both from the jury."

Meegan v. Boyle, 19 Howard, 149.

Under the Act of Congress of February 14th, 1874, the legal representatives of Moses Austin, tnke the fee in the land embraced in United States survey 430, without any regard to the fact that the said Moses Austin during his lifetime had never acquired any title under the void Morales grant.

The Act of 1874 was an original act of donations nither the legal nor equitable title having previously emanated from the government.

The fact that the survey No. 430 was made by the government in the name of Moses Austin could avail nothing as a limitation if Austin's grant was void, because the survey by the government only avails a party who is in some way the holder of a title from the government. The United States Government has, it is true, recognized inchoate titles, but in all such cases they have been *settlement rights. i. e.*, three hundred arpents for the head of the family and fifty arpents for each child. A grant of a league square is not and never has been held to be a *settlement*. Such a right is in a sense an equitable title, and such right the government recognizes and protects by this act of donation of February 14th, 1874. For the government never intends to issue two conflicting titles to the same tract of land, and that is clearly the meaning, and the only meaning, of the proviso in the Act.

The court below quoted,

Landes v. Brandt, 10 How. 348,

in support of their instruction to the jury but it is wholly inapplicable. *That* was a case where a valid execution was levied and a valid sale made of a valid title founded upon a patent from the United States government. The proof shows that no single one of those conditions exists in the case at bar.

The defendants therefore are shown by their own testimony, to be in no sense the assigns of Moses Austin under the act of Feb'y 14, 1874.

The title to the land in the Mine a Breton survey remained in the United States Government, and passed by the Act of Feb'y 14, 1874 directly to the persons embraced in the descriptive clause as heirs and legal representatives, and these are the plaintiffs in this action unless it is shown in evidence that the title, being vested in Moses Austin, passed by valid conveyances, to strangers as assigns.

The Moses Austin claim was a complete Spanish grant.

"But two instances are known to exist in Upper Louisi-
"ana, where the Intendant was applied to for a complete
"title and made the same; one case was that of Moses Aus-
"tin for a league square at Mine a Breton, a report on which
"is found in 2 American State papers 554. * * * * *

Menard's heirs v. Massey, 8 Howard at p. 304.

It being a complete Spanish grant it was not under any construction subject to, or confirmed by, the act of April 12, 1814.

That the Spanish grant of 1802 was absolutely void is unquestionable.

Consequently no title, legal or equitable, vested in Moses Austin thereby.

If Moses Austin had no title, he could have no assignees, in the sense in which the defendants claim to be such, since to create the relations of assignor and assignee, it is essential that there be something to assign.

So also Austin having neither legal nor equitable title in the land, had no interest therein which was subject to levy and execution.

The judgment obtained by the Bank of St. Louis against Moses Austin, was a void judgment.

By statute it was required that executions should issue under seal.

The executions under which defendants claim, were issued without seals, and therefore void.

The void executions were levied upon the lands of Moses Austin, but the levy was consequently void.

The levy was also void for that it was made upon lands held under a void concession.

Under the void levy of a void execution, upon a void concession, a sale was had which was consequently void.

Under the void sale a void deed was given to the purchaser.

The purchaser who acquired nothing aliened that possession by a deed, which the Supreme Court of Missouri has declared void, to the grantor of defendant's ancestor.

Their ancestor Deane, who received nothing from a grantor who had nothing to convey, brought a bill asking equity to take away from these plaintiffs the title they had, and vest it in him, who had none.

And to that end prays the court to work a judicial miracle.

Such is in brief the defence to this action.

Was there ever an instance where such a claim has been made, and such a chain of title interposed, to prevent the lawful owner from asserting his own?

The judgment of the court below should be reversed, and judgment entered for the plaintiffs in error.

Respectfully submitted,

HENRY H. DENISON,

Counsel for Plaintiffs in Error.

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STATEMENT, BRIEF AND ARGUMENT ON BEHALF OF DEFENDANTS IN ERROR.

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STATEMENT.

My associate counsel has given such a full statement of the case that it is unnecessary to do more than refer to it. But as he has not set out the record of the suit of Deane vs. Bryan *et al.* very fully, and as the counsel for plaintiffs in error, in his statement, has given a turn to the bill in that case, and to the proceedings and decree in it, to which I cannot acceed, and as the brief I present and the argument I shall make turn almost wholly on that bill and record, I beg leave to submit as concise a statement of them as possible.

The case was a suit in equity, brought and presented in the Circuit Court of Washington county, Missouri, in the year 1836, by John Deane, (the grandfather of the present defendants,) against James F. Perry and Emily, his wife, and the plaintiffs in this suit, William, Guy and Moses Bryan, together with their half-brother, Stephen, and half-sister, Eliza Perry, and an unknown child of Emily Perry, to vest in Deane the title acquired by James Bryan in the undivided moiety of the Austin Survey by the deed of Feb. 15, 1820, (the deed relied on by the plaintiffs in error as their title.)

The bill states (Tr. p. 109) that Moses Austin, since deceased, on the 11th of March, 1818, being seized and possessed of certain portions of the Mine à Breton Survey, granted to him by the proper authorities of the Spanish Government, on July 5th, 1802, and subsequently recognized by the authorities of the United States as a complete grant, mortgaged 640 acres of it (described) to the president, etc., of the Bank of St. Louis to secure fifteen thousand dollars:

That (Tr. p. 111) on Sept. 20, 1819, the Bank of St. Louis recovered judgment against Austin for fourteen thousand and one dollars and eighty-five and one-fouth cents, damages, together with costs. That on April 26th, 1819, Alexander McNair also recovered judgment for four hundred and fifty-six dollars and seventy-five cents damages, together with costs against Austin. That on said judgments executions were issued, which were levied on the interest of Austin in the tract of land aforesaid; that said land (described) after being duly advertised, was by the Sheriff sold under said executions on March 21st, 1820, to one Chas. R. Ross, as agent for the president, etc., of the Bank of St. Louis, for about seven thousand dollars; that (Tr. p. 112) the Sheriff, by his deputy, executed to Ross an instrument without seal or scroll, the affixing of the same having been inadvertently and by mistake omitted, and conveying to him in full the land as aforesaid, which instrument was duly acknowledged in open Court, March 22, 1820, and a certificate thereof under the seal of the Court endorsed on the same, and the same was then duly recorded on May 29th, 1820.

That (Tr. p. 112) Ross paid nothing on the purchase, but that the bank advanced all the money and he bought on its behalf and as its agent; that on April 19th, 1820, the bank executed a deed to Ross reciting his agency in the purchase aforesaid, and that the bank had previously assigned the claims which were appropriated to the purchase money to Risdon H. Price, Hammond, Easton & Simpson, to indemnify them for the payment of ten thousand dollars, assumed by them to be paid to the Bank of Edwardsville for the Bank of St. Louis, and releasing all the claims of the Bank of St. Louis to Ross, in trust, to dispose of and sell the property under the direction of Price and the others named, or any two of them, and deliver and pay to them jointly all proceeds of sale.

That (Tr. p. 113) on Dec. 21st, 1820, Price *et al.* executed a deed wherein they recite the above, and direct and consent that Ross sell all the right, interest, etc., of Austin, acquired as aforesaid, and held by Ross as aforesaid, and convey in fee to Risdon H. Price in consideration of ten thousand dollars, the premises aforesaid:

That on the same day (Tr. p. 114) Ross as agent, etc., executed a deed to Price, under the authority as above and on the consideration of one dollar, for all the tract aforesaid;

That (Tr. p. 115) Price on April 7th, 1821, by deed to Stephenson, McKenny & Smith, conveyed to them, in trust for the Bank of Edwardsville, the land before described, to secure ten thousand dollars and interest; that by said deed power of sale on default was vested in the trustees.

That (Tr. p. 116) on April 27th, 1821, a settlement was had between Austin and the Bank of St. Louis, a copy of which is filed, and in that settlemement Austin was allowed the sum of eleven thousand three hundred and sixty dollars in consideration of the said tract of land purchased by Ross, as agent of the Bank, at Sheriff's sale as aforesaid, and afterwards sold by the Bank to Risdon H. Price.

That under the power in the deed of April 7th, 1821, aforesaid, Stephenson and the other trustees, as such, and for default in payment of interest, sold the same to one Louis Devotion for nine thousand dollars, and on the day of sale, June 29th, 1822, executed to him a deed therefor.

That (Tr. p. 118) in October, 1822, Louis Devotion died intestate; that one Savage became his administrator; that on petition of the administrator, and to pay debts of the estate, the interest so held by Devotion was duly sold, on March ——, 1834, to John Deane (the complainant in the bill) for four thousand dollars; that the sale was duly approved, May, 1834, and on May 26th, 1835, a deed was duly executed to him by the administrator, (Tr. p. 119,) thereby conveying to him, in fee, all the right, title and interest which Louis Devotion had in the land; that all the above deeds were duly recorded, and that thereby Deane became the owner of said property.

That (Tr. p. 119) on February 15th, 1820, the said Moses Austin, by his deed of that date, granted and sold to James Bryan, in fee, one undivided half, and to Rufus Pettibone, and Levi Pettibone, in fee, one undivided fourth each of the land before described, with the understanding in the deed expressed that they took it at their own risk (Tr. p. 120) and hazard, against certain judgments and mortgages therein expressed; that is to say, the judgments in favor of the Bank of St. Louis and of Alexander McNair against Austin, and the mortgage executed by Austin to the Bank. (This is the same deed introduced by the plaintiffs (See Tr. p. 14) and relied on by them for title.) That the said deed was without any consideration, or if any, it was made as security for a debt due from Austin to James Bryan; and that the claim and interest of Bryan to the land was the said deed and was a defeasible interest.

That James Bryan died about July 9th, 1822, at Jefferson Co., Mo., leaving in full life his widow, Emily Bryan, and the following children, namely: William, Moses, Guy, and Mary; that about Oct. 1st., 1824, the widow intermarried with one James F. Perry, that Mary died about Oct. 1st, 1834, at Texas, in the Republic of Mexico, intestate, unmarried and without issue, leaving as her heirs her mother Emily Perry, and her full brothers, William, Moses, and Guy Bryan, and a half brother, Stephen Perry, and a half sister, Eliza Perry, "and as he verily believes, another half brother or sister whose name he cannot insert herein, because it is to your orator unknown, on her mother's side, born of the intermarriage between the said Emily Bryan and James F. Perry." * * * * * * *

"That said James F. Perry, and wife, and the said William Bryan, Moses Bryan, and Guy Bryan, Stephen Perry and Eliza Perry and the child whose name is unknown, all of whom your orater prays may be defendants to this bill, are without the jurisdiction of the Court and non-resident of the State and are residing in the State of Texas aforesaid," the interest of each of the defendants is then set out, in the undivided half of the land under the deed to James Bryan aforesaid, and the children are alledged to be minors under twenty one years of age.

The bill then avers (Tr. p. 121) the identity of the land described in the Bryan & Pettibone deed with the land sold by the Sheriff to Ross and mortgaged by Austin to the Bank and subsequently sold to the complainant, and that it is situate in Washington county, Missouri.

It charges that the defendants have refused and do refuse to convey to the orator the said undivided half the legal title of which is vested in them; that James Bryan took, with knowledge, etc., and without consideration; and that the orator is the representative of the bank under the sale and mortgage, and is equitably entitled to the undivided moiety of the land against James Bryan and the defendants; that the conveyance to Bryan was made to defraud creditors, and on a secret understanding between Austin and Bryan, who was his son-in-law. Then follow the jurisdictional and interrogating clauses, the prayer for special relief, which is that the said undivided moiety be vested in

Deane, and the bill concludes with a prayer for general relief.

To the bill is the statutory affidavit by complainant as to the allegations of the interest of the unknown defendant, and as to non-residence of all the defendants; and an endorsement appears by the solicitor calling for an order of publication.

The bill was filed in the Circuit Court of Washington county April 1st, 1836. Proof of due publication of the order against absent and unknown defendants was made July 26th, 1836, in open Court.

John Brickey was appointed guardian *ad litem* for all the minors (Tr. p. 123), and in open Court he consents to act. On July 27th, 1836, the *answer* of all the minors was filed by their guardian, and the bill taken *pro confesso* as to the adults, James F. and Emily Perry, an interlocutory decree being entered, and the cause continued to the next term. On November 30th, 1836, (Tr. pp. 124 and 125), final decree is entered, which is as follows:

"And now at this day comes the said John Deane, the complainant, by his solicitor, and the said William Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and a child whose name is unknown, of the said Emily Bryan, defendants, by their guardian, John Brickey, and by agreement of parties aforesaid it is consented that the bill be taken in lieu of allegations, and thereupon, neither party requiring a jury, all and singular the premises are submitted to the Court, who doth find that the matters aforesaid in form aforesaid in the bill alleged are true, and the said James F. Perry and Emily, his wife, having failed to appear at this term of the Court and file their answer to the bill of complaint, it is ordered and adjudged and decreed that the decree heretofore entered in this cause against them, be and the same is hereby made final.

And it is further ordered, adjudged and decreed that the right, title and interest of the said William Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry, and a child whose name is unknown, of the said Emily Bryan, defendants in and to the undivided moiety of that certain tract of land situate in the county of Washington in this State, heretofore granted to Moses Austin and confirmed to him by the Government of the United States, containing etc., (here the land is specifically described) being the moiety conveyed as charged in the bill of complaint by Moses Austin to James Bryan by his deed dated the 15th day of February, 1820, be vested in the said John Deane, the complainant."

Costs are then adjudged against *complainant*; and the minor defendants are given their "day in court" after attaining majority.

The statutes of Missouri in force in 1836, when this suit was begun and final decree entered will be found in the Revised Statutes of Mo. of 1835, p. 506 *et seq*. entitled "Practice in Chancery." The material sections are as follows:

Sect. 1 of Article 1. "In all cases where adequate relief cannot be had in the ordinary course of proceedings at law, the several courts of this State, having chancery jurisdiction, shall have power to proceed therein according to the rules, usages and practice of Courts of Equity, and to enforce their decrees by execution, or in any other manner proper for a Court of Chancery.

"Sect. 2. Suits in equity concerning real estate, or whereby the same may be affected, shall be brought in the county within which such real estate, or a greater part thereof, is situate.

"Sect. 3. Every person commencing a suit in equity, shall file, in the office of the Clerk of the proper Court, a bill setting forth the nature of his complaint.

"Sect. 7. If any complainant, or any person for him, shall file with his bill an affidavit, stating that part or all of the defendants are non-residents of the State, the Court, or Clerk in vacation, shall make an order directed to the non-resident defendants, notifying them of the commencement of the suit and stating fully the substance of the allegation and prayer of the bill, and requiring them to appear on a day to be therein named, allowing sufficient time for publication, and answer the bill, or that the bill will be taken as confessed.

"Sect. 10. If any complainant shall allege in his bill, that there are, or that he verily believes there are, persons interested in the subject-matter of the bill, whose names he cannot insert therein because they are unknown to him, * * and shall verify such allegations by affidavit to his bill annexed, the Court or the Judge, or Clerk thereof in vacation, shall make an order as in case of (non) residents, reciting, moreover, all allegations in relation to the interest of such unknown parties."

By Sect. 11 publication against non-resident or unknown defendants is provided for.

By Sect. 1, of Article 2, it is provided that every defendant who shall be summoned or notified according to the provisions of the Act shall plead, etc., within certain time, failing which the bill may be taken as confessed, and an interlocutory decree entered accordingly.

By Sect. 1, of Article 3, it is provided that "within such time as the Court shall by rule require, before the hearing of a cause at issue, each party shall set down, distinctly, the allegations made by him and denied by the other party, or which, by the course of proceeding in chancery he is required to support by his testimony, and issues shall be made thereon accordingly," and by section 2 it is provided that the testimony shall be confined to the issues made up as required by the preceding section.

By section 5 it is provided that "the trial of the issues and matters of fact shall be by jury, or if neither party require a jury, by the Court, and the allegations put in issue shall be disposed of by a general or special verdict, before a final decree shall be made."

By section 7 of Article 6 it is provided that "in all cases where the Court may decree the conveyance of real estate, * * they may by decree, pass the title of such property without any act to be done on the part of the defendants, where in their judgment it shall be proper." Section 11 gives right of appeal to the Supreme Court.

By the same statute, see Title "Courts" page 155 section 8, it is provided that the Circuit Courts, in the respective counties in which they may be held shall have power and jurisdiction as follows: * * * "*Fifth*, Exclusive original jurisdiction in each county in which they may be held as Courts of Equity, in all cases where adequate relief cannot be had by the ordinary course of proceedings at law."

By section 21 page 157, it is provided that all Courts established by the Act shall be Courts of Record.

No *special* provision is made in the Act regulating Chancery Practice for the service of process on infants, or the defense of the suit by them, nor is any exception made as to service of process on infants.

Even in the act regulating practice at law (see Rev. Stat. 1835 Art. 2 page 456) no *special* provision is made for service upon infants, it being clearly assumed that they were to be served or summoned as adults, and sections 24, 25, and 26 of the last cited article provide that after commencement of a suit against an infant defendant and service of process upon him, the suit shall not be prosecuted any further until a guardian for such infant be appointed; the appointment shall be made on request of the defendant, and on written consent of the person proposed, and shall be filed in the office of the clerk before any plea by such infant shall be filed; or, if the infant neglect for one day after the first day of the term at which he is bound to appear to the suit, to procure the appointment of a guardian to defend the suit, the Court shall appoint a guardian *ad litem*.

The Act of Congress of February 14th, 1874, entitled, "An Act to confirm certain land titles in the State of Missouri" is printed in full on pages 18 and 19 of the transcript.

BRIEF AND ARGUMENT.

I.

The record fails to show any jurisdiction in the lower Court, or in this Court, over the controversy. It nowhere appears that the parties plaintiff and defendant were citizens of different States.

II.

The objection and exception of the plaintiffs in error to the charge of the Court is general—see page 152, Transcript—hence, if either of the propositions contained in it is correct, the exception falls.

Rule 4, United States Supreme Court;
Johnston vs. Jones, 1 Black, 220;
Beaver vs. Taylor, 93 U. S. 54;
R. R. Co. vs. Varnell, 98 U. S. 479.

III.

The correctness of the first paragraph of the charge, relating to the legal effect of the Act of Congress of February 14th, 1874 (18 Stat. at Large, 16), will hardly be seriously disputed.

That paragraph is as follows, see page 15, Transcript, namely:

"1. That the said Act of Congress recognizes the claim of Moses Austin arising from the concession, survey and grant therein recited, and was intended to pass any remaining title (if such there was) in the United States, to the assignees of the said claim, if the same had been assigned by the said Austin."

It is difficult to read the preamble and the Act and give it any other meaning.

IV.

The objections of plaintiffs to the admissibility in evidence of the record of the suit of Deane vs. Bryan *et al.*, which objections are on page 126 of Transcript, were properly overruled. The objections are, that "it appeared by the recitals in the bill that the Sheriff's deed, the origin of title, was void, for want of a seal or scrawl (?) by the Sheriff, and, therefore, Deane had no right to bring such a bill, having no title, and being in possession merely as a trespasser; and that by further recitals it appeared that the bill was taken as confessed against minors, and that judgment was entered against them without any proof being offered before the Court, and was, therefore, void."

These objections are founded on a misapprehension of the character of the bill, on an erroneous view of the law then governing chancery practice, and an entire misunderstanding of the decree.

(*a.*) The bill states a clear case for equitable relief, and it is not founded solely on a title resting on a defectively executed Sheriff's deed. If Deane had considered those deeds perfect, there would have been no necessity for the suit. The complainant proceeded on the theory that Moses Austin, the mortgagor, in the settlement had between himself and the mortgagee on April 27th, 1821, in which he was allowed eleven thousand three hundred and sixty dollars on his indebtedness (see Transcript, p. 116), had turned over to the mortgagee, who by itself and its grantees was in possession, the mortgaged premises, in part satisfaction of the mortgage debt. This was sufficient in itself, even without a foreclosure, to pass at least an equitable title to the assignees and grantees of the bank. But as Austin had before this executed a deed to James Bryan and the Pettibones, purporting to convey to them his equity of redemption, and as that deed purported to be for value, it was necessary, in order to pass this equity to Deane, who held by mene conveyances from the bank, to show that these grantees were not such for value; accordingly this was done, the bill charging facts which would authorize a Court of Equity to pass the Bryan title to Deane; the averments as to the Sheriff's sale and deeds are mere matters of inducement; after Austin obtained credit for the value of the land on his indebtedness, equity would treat the land as the property of the mortgagee, and this even without a deed or a decree of foreclosure.

(*b.*) The proceedings were in all things strictly in conformity to the statute regulating practice in chancery; and to the decisions of the Supreme Court of Missouri construing that statute; and to the usual practice in English Chancery Courts.

A careful comparison of the various steps taken in the suit with the provisions of the Revised Statutes of Missouri of 1835, under which the suit was instituted and determined, shows how carefully and exactly the law was followed.

See the provisions applicable in the statement. They are found in Rev. Stat. 1835, title: "PRACTICE IN CHANCERY," pages 506 *et seq.* See specially

Article I, Sections 1, 2, 3, 7, 10, 11;
Article II, Section 1;
Article III, Sections 1 and 5;
Article VI, Sections 7 and 11;

Rev. Stat. 1835, title: "COURTS," page 155, Sections 8 (5th paragraph) and 21. Ibid. title: "PRACTICE AT LAW," page 456, Article II, Sections 24, 25 and 26.

This law, or like provisions in the revision of 1845, have been construed by the Courts in

Day vs. Kerr, 7 Mo. 426,

in which it is held that where an infant had not been served with process, but appeared in Court and had a guardian *ad litem* appointed, the decree is valid.

In Ruby *et al.* vs Strother *et al.*, 11 Mo. 417, it is held that the clause in Section 1, of Article I of the Chancery Act, providing that the Court "shall proceed according to the rules, usages and practice of Courts of Equity," means to resort to the practice, etc., of the English Chancery Courts where the statute is silent

To the same effect is

Hendricks vs. McLean, 18 Mo. 32;
Creath vs. Smith, 20 Mo. 113,

where it is expressly held that no exception is found in our statute regulating practice in Courts of Chancery in regard to infants.

In the above cases, as well as in those of

Heath vs. Ashley, 15 Mo. 393;
Shields vs. Powers, 29 Mo. 315,

it is, however, held that in this State, where a decree is rendered which by its own terms passes title, the infant is not entitled to "a day in Court" on attaining his majority; and in Heath vs. Ashley, *supra*, while the Court follows the general New York chancery practice, as set out in Mills vs. Dennis, 3 Johns Ch. 368, it expressly denies that the practice of giving an infant its "day in Court" prevails in this State.

In Daniels Chancery Practice, 4th Ed. Vol. 1, page 130, it is said: "Although all persons are subject to be sued in equity, there are some whose rights and interests are so mixed up and blended with others, as in case ef married women, idiots and lunatics having guardians, that they cannot be sued unless others are joined with them; while there are others, as infants, who, although they may be sued alone, are yet incapable of conducting their defense, and must obtain assistance of others to make it for them."

And in the same work, Chap. 4, Sec. 9, pages 160 *et seq.*, it is said that infants as well as adults could be made defendants; that on being summoned they were represented by guardians *ad litem*, and exactly the same rule applied, and the same jurisdiction extended to infants out of the jurisdiction as in case of non-resident adults.

(*c.*) The bill was not taken *pro confesso* as to the minor defendants, nor was the decree rendered without proof of the allegations.

(*d.*) It may not be out of place to also call attention to the exact proof of the essential averments in the Deane bill, by the documentary and oral testimony introduced at the trial of this case.

V.

The decree in the case of Deane vs. Bryan *et al.* being in conformity to the provisions of the statute of Missouri regulating the practice in chancery, in proceedings against infants and unknown heirs, and being in conformity to the rules, usage and practice of Courts of Equity in similar cases, passed the title of the Bryans (*including by name the plaintiffs in error*) to Deane the ancestor and grantor of defendants.

Gitt vs. Watson, 18 Mo., 274.

Hence the third paragraph of the charge, page 152 transcript, that even "if those Sheriff's sales and deeds were defective, the record and decree in the suit of Deane (under whom defendants claim) against William J. Bryan and others (including *inter alia*, the plaintiffs in this suit), are conclusive against the present plaintiffs, and estop them from attacking, in this collateral manner, the validity of said Sheriff's sales and deeds," and instructing the jury to find for defendants, is a correct statement of the law.

The Circuit Court of Washington county was a court of superior, of general jurisdiction; it possessed general and full chancery powers; it had exclusive original jurisdiction over the subject matter, namely, the controversy as to the title to real estate all situate in that county (Rev. Stat. Mo. 1835, p. 506, Sec. 2, p. 155, Sec. 8; p. 157, Sec. 21); it had by the order of publication made as required by statute, full jurisdiction over the persons of the defendants. (See Rev. Stat. 1835, Art. 1, Secs. 7, 10, 11), and its decree cannot be attacked collaterally, even for error.

Hare and Wallace's notes, 1 Smith Lead. Cases, Part 2, p. 1001, star page 826.

Gignon's Lessee vs. Astor, 2 How. 319.
Florentine vs. Barton, 2 Wall. 210.

Nor does the fact that plaintiffs in error were infants when that decree was rendered make any difference. A decree or order of the Court by which the rights of parties have been determined is as conclusive on an infant as on an adult.

1 Daniels Chy. Pr., p. 659 (Chap. 15, § 2.)

An infant defendant is as much bound by a decree in equity as a person of full age; therefore if there be an absolute decree made against an infant, he will not be permitted to dispute it, unless upon the same grounds as an adult might have disputed it, such as fraud, collusion or error.

1 Daniels Chy. Pr., p. 164.

And to impeach it for any of these causes the infant must proceed by bill of review or by original writ.

Ibid, page 164.
Ruby *et al.* vs. Strother, 11 Mo. 422.

The case of Heath's adm'r. vs. Ashley's adm'r., 15 Mo. 393, relied on by plaintiffs, holds that a decree *pro confesso* against an infant is merely *erroneous*, not void.

In Creath vs. Smith, *supra*, it is held that even a bill of review will not lie for errors apparent on the face of the record, after the time when a writ of error could be brought (in this State, three years).

In Shields vs. Powers, 29 Mo. 315, it is expressly held that while decrees against infants for want of an answer, *pro confesso*, were erroneous, they were not void; and that infants, like adults, could only take advantage of error in a decree by a direct proceeding.

VI.

Either the deeds or the decree, (apart from any defense under the Statute of limitations given by an actual, open, notorious, adverse possession, under claim and color of title for over forty-eight years continuously before the bringing of this suit by defendants, their ancestors and grantors) constitute the defendants the legal representatives and assigns of Moses Austin within the meaning of the Act of Congress of February 14th, 1874, (18 Stat. at Large 16, also Transcript p. 18).

Landis vs. Perkins, 12 Mo., 238;
Landis vs. Brandt, 10 How., 348;
Hogan vs. Page, 2 Wall, 605.

In the last cited case this Court says: "This formula, 'or his legal representatives,' embrace representatives of the original grantee in the land, by contract, such as assignees or grantees, as well as by operation of law, and leaves the question open to inquiry, in a Court of Justice, as to the party to whom the certificate, patent or confirmation, shall enure."

VII.

It has remained for counsel for plaintiffs in error to discover, after all these years, that the claim of Moses Austin was so utterly void until 1874, that he had neither a legal title, an equitable claim or even a "settlement right" to the land. The general Government from 1817 to the passage of the Act of 1874 has always recognized it as a substantial right; the Courts, according to the very cases cited by plaintiff, especially Perry vs. Price, 1 Mo. 646, recognized it as a vendible interest. In the case of Deane vs. Bryan the Court finds it was a completed grant; all persons have so treated it; and the terms of the Act of 1874 and the preamble to it do not admit of any construction other than that the Government made no claim to the land in the survey as public land; on the contrary, it is evident that at most the Government was attempting to quiet a title which plaintiffs' counsel seems to concede only needed a patent under the Act of 1814 to be a complete legal title, and was not making a new grant. In my own opinion the grant was covered by the Act of April 12, 1814, and whether a patent was required under it or not is immaterial, as Austin had such an interest as he could sell, as the Courts could take hold of, and that interest, under the decree in Deane vs. Bryan passed to Deane November 30, 1836, and has been there and in his descendants ever since.

There is no error in the record to the prejudice of plaintiffs; the judgment of the lower Court should be affirmed and the writ be dismissed.

GEO. D. REYNOLDS,
Of Counsel for Defendants.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884.

WILLIAM J. BRYAN ET AL.,
Plaintiffs in Error,
vs.
FERDINAND B. KENNETT ET AL.,
Defendants in Error.
No. 7.

BRIEF FOR DEFENDANTS IN ERROR ON WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FRANK J. DONOVAN,
Counsel for Defendants.

Nixon-Jones Printing Co., Law Printers, 210 and 212 Pine Street, St. Louis

IN THE

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WILLIAM J. BRYAN ET AL., *Plaintiffs in Error,* *vs.* FERDINAND B. KENNETT ET AL., *Defendants in Error.*	*No. 7.*

BRIEF FOR DEFENDANTS IN ERROR ON WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT.

This is an action in ejectment for the possesion of 640 acres of land in Washington county, Mo., adjoining the town of Potosi.

Plaintiffs claim, as heirs at law of Moses Austin, the defendants are in possession of the property as purchasers under Moses Austin.

The history of the land is briefly as follows: —

On March 15, 1797, the Baron of Carondelet, Governor-General of Louisiana, instructed Zenon Trudeau, Lieutenant-Governor, to place Moses Austin in possession of one league square of land at Mine a Breton. Record, page 19.

On April 5, 1798, this land was taken into possession by the agents of Austin. Record, page 22.

On October, 1798, Austin personally took possession of the land and built a lead furnace on it. Record, page 23.

On January, 1799, the furnace was completed and put in operation. In June, of the same year, Austin built a dwelling; and moved on the land with his family in July, 1799. Blacksmith shop, shoe factory and saw mills were built on land. Record, 22 and 23.

In January, 1799, Zenon Trudeau, Lieutent-Governor, ordered Antoine Soulard to survey the land and put Austin in possession of same. Record, 19.

On July 19, 1799, Soulard executed said survey (No. 52), amounting to 7153 arps. and 3 2-3 feet, which was certified by Soulard in November, 1800. Record, page 21.

On July 5, 1802, Don Juan Ventura Morales, Governor-General at New Orleans, in the name of the King granted the land so survey to Moses Austin.

On July 9, 1802, grant was recorded as No. 96 by the Register, Pimenez. A., 100. (See Am. State Papers, Vol. 3, pp. 591 & 592.) Record, page 24.

In August, 1817, the United States, in Survey No. 430, surveyed the tract sued for in the name of Moses Austin. Record, 13.

Shortly after that time Austin became embarrassed, for by deed dated February 15, 1820 (recorded February 29, 1820), when he makes the deed under which plaintiffs claim, he recites that there are several judgments against him, among which are the judgments in favor of McNair and the

Bank of St. Louis, under which the land was sold. Record, page 14.

The transcripts of the judgments in that cause are in evidence. Under these judgments the lands were sold, not only the 640 acres covered by the mortgage, but all Austin's interest in U. S. Survey 430. Record, 27 to 36.

At this sale Charles R. Rose purchased the property for $7,000, — as agent of the bank. The land was sold by a deputy sheriff under these executions in these cases, and the deed is signed by a deputy sheriff. This is the defect on which plaintiffs expect to deprive defendants of their land. This sheriff's deed is dated March 21, 1820, and was recorded May 29, 1820. There was possession under this sale, and the transcripts of the two judgments under which property were sold show the authority to sell. It does not appear that Rose actually went upon the lands, in fact, he was nothing in this entire transaction but an agent of the Bank of St. Louis, holding and conveying the lands at the direction of others. The deeds of the bank to him and his conveyances show that fact. (Record, page 37.) The first person acquiring title absolutely in himself was Risdon H. Price, who purchased the bank's interest and received a deed from Ross, in December, 1820. The testimony shows that he was in possession long prior to 1828. Record, 40 to 43.

How long prior to that date does not appear. It does appear, however, from the testimony of Wm. J. Bryan, that Moses Austin resided at Durham until about the first of May, 1820; that then he went to Texas and returned to Missouri in 1821. Record, 17.

After his return he resided at Herculaneum, Missouri, and finally died at Hazel Run, Missouri, on June 10, 1821. From these facts it appears that Austin in his lifetime abandoned all claim to the land in controversy, and it is not contended that he himself ever asserted any. The deed under which plaintiffs claim repels such idea by its express terms in stating the indebtedness to which the land was subject, and that the grantees in that deed took same at "*their own risk.*" Record, 14.

After Price became possessed of the title to the land, about April 7, 1821, he executed a mortgage to Benjamin Stephenson et al., to secure $10,000. (Record, 43.) That debt was never paid, and on the 9th of June, 1822, the land was sold and conveyed to Louis Devotion for $9,000. Record, 47 to 51.

Devotion died, and after his death his administrator, on May 26, 1835, sold the land to John Deane, whose grandchildren now own the land. Record, 52 to 64.

It appears from the record that Price was not disposed to abandon the land even to his own mortgagee. It further appears that there was a contest, because we find on the 8th day of June, 1820, an agreement between Price and Devotion concerning this land, wherein Price is to be permitted to redeem the land within four years and in the meantime hold possession.

On October 1, 1822, and during the pendency of this agreement, Devotion died.

Price, instead of paying $9,600, covered by agreement on the 28th day of June, 1828, sold his interest in the land to William Milan for $1,979.48, and Milan went into possession. Record 89.

Here commenced a series of attempts on Milan's part to obtain a title to the land and to exclude the claim held by the estate of Louis Devotion, the grantors of Deane.

Whatever vestige of claim might have remained in the Old Bank of St. Louis was sold on execution to John Smith T. on the 10th of August, 1826 (Record, 100), and purchased from him by Milan, on July 13, 1832. (Record, 104).

The interest of the Pettibones was acquired at about the same time in the same manner. Record, 105,107.

Milan paid for both of these interest, and at that time the only claimants for the land in question were John Deane, who aquired his title from the estate of Louis Devotion and William Milan, who held possession under Price, and under Price's agreement with Louis Devotion.

The Bryans had not asserted any claim under this deed of the 15th of February, 1820.

James Bryan had died at Herculaneum, Mo., on July 16, 1821. He left a widow and four children. William, born December 14, 1815, and Moses A., September 25, 1817; Guy M., July 5, 1821.

The widow of James Bryan married James T. Perry, on September 23, 1824, and soon after her marriage moved to Texas, where she died in 1852.

It is not contended that either Bryan or any one else under the Moses Austin deed ever took or claimed possession of the Austin tract. So the only claimants to the title were John Deane and William Milan.

These two submitted their differences to the decision of the late Hon. Edward Bates, under an agreement of arbitration. Record, 126 to 129.

He decided between them. They abided by his decision, and John Deane went into possession of the land on November 8, 1841, under the deed from Willam Milan. Record, 129.

Prior to this arbitration John Deane, had caused to be instituted his action against these present plaintiffs and others to have the title, whatever it might be, which was acquired under the deed of February 15, 1820, or otherwise, vested wholly in him John Deane.

This proceeding was instituted as far back as April, 1 1836. Record, 109.

A final decree of court divesting these plaintiffs of any interest in the lands in question was had on the 30th of November, 1836, and vesting it in John Deane. Record, 124, 125.

This record is a bar to any right of recovery plaintiffs can possibly have in this cause.

It conclusively estops them from attacking in this collateral manner the validity of sheriff's sales and sheriff's deeds, under which John Deane's grantors had acquired title some sixteen years previous to this decree. Even if it were possible to find flaws in the title to this land in the record and decree of 1836, still plaintiffs are far removed from being entitled to assert so stale a claim to the farm of John Deane.

By virtue of the act of Aril 12, 1814 (Statutes at Large, Vol. 3, page 121), the equity in the land passed to Moses Austin, and if so by deed and limitation, it passed to John Deane.

The claimants, to obviate the force of continuous possession in defendants for over half a century, deny the effect of the claims and recitals in the act which confirms the title to Moses Austin or his assigns.

The act is as follows: —

Act of Congress of February 14th, 1874, conveying interest of United States in said survey to the assigns and legal representatives of Moses Austin, as follows: —

Act of Congress of Feb'y 14, 1874, conveying interest of U. S. in certain land, &c.

Chap. 29. — An act to confirm certain land titles in the State of Missouri.

Whereas the Baron of Carondelet, governor-general of the Territory of Louisiana, did on the fifteenth day of March, Anno Domini seventeen hundred and ninety-seven, instruct Zeno Trudeau, lieutenant-governor of said Territory, to place Moses Austin in possession of a league square of land at Mine a Breton, in said Territory; and

Whereas the said Moses Austin did, in the year Anno
Domini seventeen hundred and ninety-eight, take
possession of the said land by moving upon it with
38 his family, and did improve the same by building
dwelling-house, blacksmith shop, furnace, and other
improvements and

Whereas the said lieutenant-governor did, on the fourteenth day of January, seventeen hundred and ninety-nine, order Antone Lulard, surveyor in said Territory, to survey the said land and put the said Austin legally in possession of the same, which survey, numbered fifty-two, contained seven thousand one hundred and fifty-three arpents and three and two-thirds feet, was executed by said Antone Lulard, and a certificate of the same filed by him in November, Anno Domini eighteen hundred; and

Whereas Don John Ventara Morales,, then governor at New Orleans did, in the year of our Lord eighteen hundred and two, in the name of the King of Spain, grant to said Moses Austin the land so surveyed and located: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States hereby release whatever title they have had to said lands now numbered four hundred and thirty on the plat in the surveyor-general's office, and in townships thirty-seven and thirty-eight, range two east,
in the county of Washington and State of Missouri,
containing seven thousand one hundred and fifty-
39 three and thirty-two one-hundredths arpents (six
thousand eighty-five and twenty-nine one-hundredths
acres), to the heirs, legal representatives, or assigns of said Moses Austin according to their respective interests therein: Provided, however, that this act shall not affect nor impair the title which any settler or other person may have acquired adverse to the title of said Moses Austin to any portion of said land.

Approved February 14th, 1874.

The defendants are the *assigns of Moses Austin*, but even if not, it can not be implied from that act that Congress intended to perpetrate as great a fraud as is here claimed and presented.

"It was not intended to affect or impair the title to which any settler or other person may have acquired adverse to the title of said Moses Austin."

There is in this record no question as to the fact of adverse possession.

The defendants and those under whom they claim have been in continued, open, notorious, and adverse possession of this land for over fifty years without any claim from these plaintiffs, their ancestors or grantors.

This is established by all of the witnesses whose testimony extends back.

A claim of uninterrupted, visible, exclusive, and notorious adverse possession under a claim of title for twenty years is one of the good defenses to this action.

The testimony of Levi Pettibone is in the record and states why the deed of February 15th, 1820, was given. Rufus Pettibone, one of the grantees in that deed, never sought to claim the land. Even if he were not alive at the age of 98 to give this testimony, yet the conduct of James Bryan or his widow and these plaintiffs show that they never imagined they had any claim to or interest in this land, until some ghoulish investigator raked among the ashes of the dead for a pretext under the guide of law to deprive these defendants of what under the law of God and man is justly theirs.

EVIDENCE PRESENTED AT TRIAL.

Plaintiff offered in evidence the following: —

1. Certified Copy of U. S. Survey, No. 430, in the name of Moses Austin, dated August 14 and 15, 1817, for 7,153 arpents of land.
   Record, 13.
2. Certified copy of deed from Moses Austin to James Bryan et. al., conveying to him one undivided half part of the claim of 7,153 arpents, being the same known as U. S. Survey, No. 430, dated February 15, 1820.
   Record, 14.

3. Deposition of Guy M. Bryan, showing that the plaintiffs are the children of the said James Bryan and Emily M. Austin, his wife, and the grandchildren of the said Moses Austin.

Record, 16 and 17.

4. Act of Congress of February 14, 1874, conveying the interest of the United States in said survey to the heirs, legal representatives, and assigns of the said Moses Austin.

Record 18.

Plaintiffs here rested their case.

1. The defendants then offered in evidence certified copy of the order of the Baron de Carondelet, Governor-General of the Province of Louisiana, dated March 15, 1797, instructing Zenon Trudeau, Lieutenant-Governor of said Territory, to place Moses Austin in possession of a league square of land at Mine a Breton, in said Province.

Record 19.

2. Certified copy of plat of Survey No. 52, containing 7,172 arpents, at 32⅔ feet of land, in the right of Moses Austin, as the same appears of record in first part of registered arpentage, page 85, Soulard's Surveys, in the office of the Register of Lands, in the State of Missouri.

Record 20.

3. Copy of the record of grant by Don Juan Ventura Morales, Intendent of the Province of Louisiana to Moses Austin, dated July 5th, 1802.

Record, 23.

All of the above objected to by plaintiffs, as void under the laws of the United States, and irrelevant. Objection overruled, to which the plaintiffs then and there excepted.

4. Claim of Moses Austin for 7,153 arpents of land recorded by U. S. Recorder of land titles.

Record, 24.

5. Certified copy of the mortgage of Moses Austin to the Bank of St. Louis, dated March 11, 1818,

conveying six hundred and forty acres out of said tract, locating the same by metes and bounds.

Record, 25.

6. Certified copy of judgment and execution of the Bank of St. Louis against Moses Austin, of the 1st day of October, A. D., 1819.

Record, 27.

(Copy of execution objected to by plaintiffs because it contained neither testimonium, nor seal of court, nor even scrawl. Objection overruled, to which the plaintiffs then and there excepted).

7. Copy of judgment of Moses Austin against Alexander McNair and of execution. McNair against Austin, dated October 14, A. D., 1819.

Record, 31

(Copy of execution objected to by plaintiffs, because it contained neither testimonium, nor seal of the court, but only a scrawl, objection overruled, to which the plaintiffs then and there excepted).

8. Certified copy of deed of Moses Austin by the Sheriff to Charles R. Ross, agent for the bank of St. Louis, dated March 21, 1820.

Record, 32.

(Objected to by plaintiffs because it contained no seal by the sheriff, nor any seal of the court to the certificate of the clerk taking the acknowledgment. Also the sale by the sheriff objected to because it appeared from the judgment and the mortgage, that it was the sale of the same land on which the bank held a mortgage).

These objections were overruled, to which the plaintiffs then and there accepted.

9. Certified copy of a deed of the Bank of St. Louis to Charles R. Ross, executed by Risdon H. Price as President, and without a seal, dated —— day of April, 1820.

Record, 37.

(Objected to by plaintiffs, because it did not purport to be under the official seal of the bank as a corporation.

Objection overruled; to which plaintiffs then and there excepted.)

10. Certified copy of deed of Robert Simpson, Rufus Easton and Samuel Hammond, directors of the bank of St. Louis to Charles R. Ross, dated Dec. 21 1820.

Record, 39.

11. Certified copy of Deed of Charles R. Ross, to Risdon H. Price, dated Dec. 21, 1820.

Record, 41.

12. Certified copy of deed of trust by Risdon H. Price to trustees of the Bank of Edwardsville, dated April 7, 1821.

Record, 43.

13. Certified copy of deed of Ben Stephenson, T. W. Smith and R. T. McKenney, trustees of the Bank of Edwardsville, on sale of interest of Risdon H. Price to Louis Devotion, dated June 19, 1822.

Record, 47.

14. Certified copy of the appointment of W. H. Savage, as administrator of Louis Devotion, dated October 31, 1822.

Record, 52.

15. Certified copy of the petition of administrator of Louis Devotion to sell land, and the orders thereon, dated November 11, 1831.

Record, 53.

16. Certified copy of deed by administrator of Louis Devotion to John Deane, dated May 26, 1835.

Record, 63.

The defendants then offered in evidence the following in support of a claim of a second chain of title.

17. Certified copy of the deed of Moses Austin and wife to James Bryan and Rufus and Levi Pettibone, dated February 15, 1820, being the same deed offered by the plaintiffs and numbered 2 of this statement.

Record, 66.

18 Certified copy of record in the case of Pettibone *et*

al. v. Risdon H. Price, *et al.*, the same being a chancery proceeding in the County of St. Louis, embracing all the proceedings from the Bill to the Decree. Dated January 14, 1822.

Record, 68–89.

19 Certified copy of deed of Risdon H. Price and wife to William Milam, dated June 20, 1828.

Record, 89.

20. Certified copy of proceedings of estate of Rufus Pettibone, deceased, in the County Court of St. Charles County. Petition of Levi Pettibone for leave to sell real estate, and orders thereon, dated May 27, 1829.

Record, 91.

21. Deed of the justices of the County Court of St. Charles County to Levi Pettibone, dated November 25, 1829.

Record, 98.

22. Certified copy of judgment against the Bank of St. Louis, in favor of John Smith, T., and execution, dated May 24, 1826.

Record, 100.

23. Sheriff's deed for Mine a Breton, to John Smith, T., upon sale under said execution, dated August 10, 1826.

Record, 102.

24. Certified copy of deed of John Smith, T., to William Milam, dated July 13, 1832.

Record, 104.

25. Certified copy of deed of Levi Pettibone and wife, to William Milam, dated January 13, 1834.

26 Letter of Levi Pettibone to William Milam, dated January 13, 1834.

Record, 107.

27. Certified copy of bill in equity, appointment of guardian *ad litem*, and decree in chancery suit. John Deane *v.* W. J. Bryan *et al.*, in the Circuit Court of the County of Washington. Bill filed April 1, 1836.

Record, 109.

(To which plaintiffs objected, because it appeared by the recitals in the bill that the sheriff's deed, the origin of title, was void for want of a seal or scrawl by the sheriff, and therefore Deane had no right to bring such a bill, having no title, and being in possession merely as a trespasser; and that by further recitals it appeared that the bill was taken as confessed against minors, and that judgment was entered against them without any proof being offered before the court, and was therefore void. These objections were overruled, to which the plaintiffs then and there excepted.)

28. Certified copy of bill in equity of John Deane *v.* William Milam, and agreement of arbitration and award of arbitrators.

Record, 126.

(Objected to by plaintiffs as immaterial and irrelevant, and objection overruled and plaintiffs except.)

20. Certified copy of deed of William Milan to John Deane, dated November 8, 1841.

30. Deposition of Levi Pettibone, in which he testifies that the deed of Moses Austin and wife to James Bryan and Levi and Rufus Pettibone, dated February 15, 1820 (see p. 14 of record), was, so far as the Pettibones was concerned, a security for a claim his brother had against Moses Austin, and that the claim was paid in 1829 or 1830; that Moses Austin's grant was from the Spanish government in 1797, and he supposes Austin went into possession at once; that Risdon H. Price was in possession since about April, 1821; that witness had been in possession; that witness left St. Louis in 1820; that he had never paid any taxes on the property; that he had no knowledge of either his brother, Rufus Pettibone, or James Bryan being in possession of the tract or paying taxes on it.

Record, 131.

Attached to the depositions are these exhibits: —

A. Deed of Moses Austin and wife to James Bryan and Levi and Rufus Pettibone, dated 15th Febru-

ary, 1820, conveying the Shaw tract, of six hundred and forty acres.
Record, 134.

B. Deed of Elias Bates and wife to James Bryan and Levi and Rufus Pettibone, dated February 15, 1820, conveying the same property.
Record, 135.

C. Extract from proceedings of the Bank of St. Louis regarding the Pettibones interest in the Austin tract, allowing the Pettibones to share, *pro rata*, with the bank in the proceeds of the Mine a Breton property.
Record, 136.

31. Deposition of Israel McGready, dated March 19, 1878. Testifies that he has lived at Potosi, Missouri, sixty years; was acquaiuted with Moses Austin, James Bryan, William Milam and Major John Deane; that when he came to this country Moses Austin was in possession, of Mine a Breton being the Moses Austin grant, survey No. 430; that it was sold by the sheriff March 22, 1820; that he does not remember who was next in possession; that the next one he remembers in possession was Risdon H. Price. He claimed the whole of the tract. He was succeeded by William Milam, who claimed all of the Austin survey. He went into possession about 1828. John Deane went into possession after William Milam. He claimed the whole of said tract known as the Moses Austin Survey, No. 430, and went into possession during the year 1841. Held it until he sold to John Deane, Jr., who held the possession until his death in 1866, since which time it has been in the possession of the heirs of John Deane, Jr.
Record, 138.

32. Deposition of Littleton W. Harris, of the same date, testifies that he has lived in Washington County fifty-one years; that when he came to this county Risdon H. Price was in possession of the property in question. He

testifies substantially as the last witness in regard to the subsequent possession of the property.

Record, 141.

33. Deposition of James Long, dated March 21, 1878, testifies that he has known the Austin grant since 1852; that the property embraced in the present suit is worth from two hundred and fifty to three hundred dollars per annum above the amount required to pay taxes.

Record, 142,

34. Deposition of George B. Cole, of same date, testifies that he has resided near Potosi, Mo., for fifty years, and has known the lands of the Austin grant for that length of time; that when he first knew the land in 1828 William Milam was in possession. Witness testifies as to the subsequent possession down to the present day, substantially as the other witnesses have testified.

Record, 143.

35. Deposition of John Teasdale, of same date, testifies that he has resided in Potosi, Mo., since fall of 1881; that he knows the lands generally known as the Austin grant; that Major Deane took possession of the tract soon after witness came to the country. Witness testifies substantially as the other witnesses as to the possession down to the present day. He also testifies that six to eight hundred dollars per year would cover the rents on the property embraced in this suit, only one or two hundred dollars after deducting taxes.

Record, 145.

36. Parol proof that the sole heirs of John Deane, deceased, are Margaret B. Deane, Annie Deane, Fannie Deane, now wife of Charles H. Mallory, and John B. Deane.

This was all the evidence offered by the defendants.

The plaintiffs offered evidence in rebuttal, as follows: —

1. Certified copy of extract from the minutes of the Circuit Court of Washington County, under date of August 23d, 1823, showing that on that day "personally "appeared in open court Andrew Miller, late deputy of "Daniel Dunklin, late Sheriff of Washington County, and

"affixed his seal to an instrument of writing purporting to "be a deed conveying Moses Austin's title to the Mine a "Breton tract of land, to Charles R. Ross, and thereupon "acknowledged the execution of said deed to be his act and "deed for the purposes then mentioned."

2 Certified copy of deed by the sheriff to Charles R. Ross, agent for the Bank of St. Louis, as recorded July 12, 1825, with minutes of court attached. This being the same deed introduced in evidence by the defendants, as appears on p. 33 of the Record.

This was all the testimony in the case. The court then, of its own motion, gave to the jury its instruction, as follows: —

"GENTLEMEN OF THE JURY: —

Under the Act of February 14th, 1874, (18 Stat. "at Large, 16,) as applied to documentary and record "proofs in the cause, and the undisputed fact of open, act- "ual, adverse and continuous possession in the defendants, "and those under whom they claim title to the premises in "controversy since the year 1828, the court instructs the "jury as follows: —

1. "That the said Act of Congress recognizes claim of "Moses Austin arising from the concession, survey and "grant therein recited, and was intended to pass any remain- "ing title, (if such there was,) in the United States, to the "assignee of the said claim if the same had been assigned "by the said Austin."

2. The sheriff's sales in 1820, under judgments against Moses Austin, followed by sheriff's deeds, did make the purchaser an assignee within the meaning of said Act of Congress. (Landis *v.* Perkins, 12 Mo. 238. Landis *v.* Brandt, 10 How. 348.)

3. If those sheriff's sales and deeds were defective, the "record and decree in the suit in the case of Deane (un-

" der whom defendants claim) against Wm. J. Bryan and " others, (including *inter alias,*) the plaintiff in this suit, is " conclusive against the present plaintiffs, and estop them " from attacking in this collateral manner the validity of " said sheriff's sales and deeds.

" These views give the defendants a title irrespective of " the Act of April 12, 1814, (Stat. at Large, Vol. 3 p. " 121,) and irrespective of whether the defendants, under " the implications of the Act of February 14, 1874, may " not have a good title or defense under adverse posssession, as to which points we do not find it necessary to give " any opinion. Under these instructions you will find a " verdict for the defendant."

John F. Dillon,
Samuel Treat.

Record, 151.

(To the giving of which instruction the plaintiffs then and there excepted.)

Whereupon the jury rendered a verdict for the defendants.

The plaintiffs, after motion for new trial was overruled and exceptions taken, bring the cause here by writ of error.

POINTS FOR ARGUMENT.

I. There is a question on the face of the Record whether the court has jurisdiction, there being no allegation that the parties to the controversy were citizens of different States.

II. The Morales grant to Moses Austin passed such a title as made it the subject of levy and sale.

III. Even if such was not the case the title passed by the act of April 12, 1814.

IV. Within the meaning of the Act of Congress the documentary and record proofs offered in evidence constituted the Deane heirs the assignees of Moses Austin.

V. The decree in the case of John Deane *et al. v.* W. G. Bryan *et al.*, concludes the present plaintiffs and estops them from attacking defendant's title.

VI. The plaintiffs are estopped by the recitals contained in their own deed. .

VII. The plaintiffs could not recover for the further reason that the mortgage from Austin to the bank remains unsatisfied.

VIII. Plaintiffs can not recover for the further reason that the record does not dispute *this fact;* that the defendants have had open, actual, adverse and exclusive possession since the year 1828.

Whereas the Baron of Carondelet, governor-general of the Territory of Louisiana, did on the fifteenth day of March, Anno Domini seventeen hundred and ninety-seven,

BRIEF AND ARGUMENT.

Either Moses Austin had a valid title when he made the deed of February 15, 1820, offered in evidence by plaintiffs, or he did not. If he had title then I understand why objection is made to the sheriff's deed of March 21, 1820, to the deed of direction of the bank to Ross. If the title to this property did not accrue to Austin's heirs until 1874 I do not see the point of the objection, inasmuch as nothing was conveyed by the deeds objected to. We contend, however, that Moses Austin had title when he made that deed.

When the territory of Louisiana was ceded to the United States by the treaty of April 30, 1803, it was expressly agreed in Art. III. of that treaty that the inhabitants of the ceded territory should be protected in all their rights and property. This was a necessary consequence of the treaty between France and Spain — known as the Treaty of Ildefonso — entered into between these two countries on the first of October, 1800, whereby France acquired the territory.

Pub. Laws, Vol. 1, p. 42.

What was the condition of Moses Austin's title on April 30, 1803. There was some hesitation about offering the preamble of the Act of 1874 in evidence, but that is part of the act and explanatory of it and we do not think he is at liberty to dispute the preamble. It is his title deed, as he claims, to the property and he is bound by the statements in it. Now how does that preamble read?

instruct Zeno Trudeau, lieutenant-governor of said Territory, to place Moses Austin in possession of a league square of land at Mine a Breton, in said Territory; and

Whereas the said Moses Austin did, in the year Anno
Domini seventeen hundred and ninety-eight, take
possession of the said land by moving upon it with
38 his family, and did improve the same by building
dwelling-house, blacksmith shop, furnace, and other
improvements and

Whereas the said lieutenant-governor did, on the fourteenth day of January, seventeen hundred and ninety-nine, order Antone Lulard, surveyor in said Territory, to survey the said land and put the said Austin legally in possession of the same, which survey, numbered fifty-two, contained seven thousand one hundred and fifty-three arpents and three and two-thirds feet, was executed by said Antone Lulard, and a certificate of the same filed by him in November, Anno Domini eighteen hundred; and

Whereas Don John Ventara Morales,, then governor at New Orleans did, in the year of our Lord eighteen hundred and two, in the name of the King of Spain, grant to said Moses Austin the land so surveyed and located: Therefore,

This then was the condition of Moses Austin's claim when the land was ceded to the United States — what was the title thus acquired by the United States? The grant had been recorded, Moses Austin was in possession; he was cultivating the lands; had built houses, barns and furnaces on it. So far as the Government of Spain was concerned, his title was absolute — his boundaries had been fixed by an official survey and in other ways his grant was a good Spanish grant.

Under the third article of the treaty the title acquired by the United States was subject to the rights of Moses Austin and that under that treaty the United States was bound to protect Moses Austin in "*the full enjoyment of* *his property.*" Hence we contend that nothing whatever was necessary to be done by Moses Austin.

But the record show sthat Moses Austin did more, that he presented his claim before the commissioners appointed under Act of 1805 (Vol. 1, p. 122, Land Laws), it is contended that this was not done until 1811, but this is a mistake, as we find that the testimony in support of the claim was taken October 12, 1808 (Am. State Papers, Vol. 3, p. 591). It is also a mistake to assert that the claim was rejected because proper papers had not been filed before the commissioners, and further that the commissioners decided that the Spanish grant to him amounted to nothing. The record shows that said claim was rejected because "a majority of the Board ascertain that this title is not a grant made and completed prior to the first of October, 1800." (Am. State Papers, Vol. II., p. 554.)

As to the character of these grants (p. 259, Vol. 12) and their being the subject of sale under execution, we can not state the law clearer than in the language of Judge Scott who says in 12 Missouri, at page 258: —

"It is a matter of history of which this court will take judicial notice that at the time of the cession of Louisiana to the United States, in that portion of the territory of which this State is composed, nineteen twentieths of the titles to lands were like that involved in this case prior to its confirmation. There were very few complete grants. Most of the inhabitants were too poor to defray the expenses attending the completion of their titles, but they *had faith in their government* and rested as quietly under their inchoate titles as though they had been perfect (Stoddart Sketches, 245). As early as October, 1804, we find the legislature speaking of freeholders and authorizing executions against lands and tenements (See law establishing courts for trial of small causes, passed October, 1804, sec. 10).

"There being so few complete titles the legislatures *in subjecting lands and tenements generally to execution, must* *have contemplated a seizure and sale of those incomplete titles which existed under the Spanish government."*

At the date of the act above referred to no titles had been confirmed by the United States. An instance is not recollected in which a question has been made as to the liability of such titles as Clamorgan's under the Spanish government to sale under execution.

It is believed that *such titles have been made the subject of judicial sales without question ever since the change of government."*

II.

It is not contended that Austin did not have the grant from Spain for the land, but suppose the grant to him was an "incomplete grant," as it is usually termed, then we contend that under the Act of April 12, 1814, that incomplete grant was made complete, and the title passed out of the United States. What were the conditions for a confirmation under that act?

1. The claim must be based upon an incomplete grant, concession, warrant or order of survey prior to March 10, 1804.

2. The claimant must have been a resident of the province.

3. The claim must have been filed with the Register or Recorder.

4. It must have been embraced in the report of the Commissioner, Register or Recorder for district in which lands are situated.

5. That there must be a special location or survey before March 10, 1804.

6. That said claim shall not have been adjudged to be ante-dated or otherwise fraudulent.

7. That said claim shall not be for more than one league square.

8. That the claimant shall not have had a donation grant from the United States.

U. S. Stat. Vol. III., p. 121.

Does the claim of Austin conform to these requirements? We contend that it does: —

1. It is, under plaintiffs' theory, an incomplete Spanish grant, made July 5, 1802, and consequently prior to March 10, 1804.

2. When the grant was made Austin was a resident of the territory. The act of 1874 and the testimony of Levi Pettibone show that fact.

3. The claim was filed with the Recorder in the proper district, and is properly recorded. A., 100.

4. The claim is embraced in a report of commissioners made December 11, 1811 (Am. State papers, Vol. II., 554).

5. The land was actually located or surveyed prior to March 10, 1804, as appears from the official survey by Soulard in 1799, and from act of 1874.

6. It is not contended that the claim is ante-dated or fraudulent.

7. It does not cover more than one league square.

8. And Austin does not appear to have received any donation grant from the U. S.

Hence we consider that the claim, even if an incomplete grant, meets all the requirements of the act; and in that event the act *confirmed* the land to Moses Austin. If the land was thus confirmed to Austin, there was no need of any patent to issue, as under the doctrine laid down in a long series of cases in Missouri, commencing with the case of Page *v.* Scheibel, 11 Mo. 167, the confirmation operated as a grant of all the interest of the United States in the land. The same doctrine is affirmed in the case of Langdeau *v.* Haines, 21 Wall., where the court holds that when a patent issues after confirmation of land it conveys nothing, but is simply an evidence of title. It will be contended that this act *proprio vigore* does not confirm the lands. To avoid that object the survey by Ashley in 1817, of the land, was offered in evidence. So that under either theory in 1818, Austin was legal owner of the property.

III.

But we contend further that even if Austin was not owner, these defendants are estopped by the recitals in the deed of February 15, 1820, from denying either that Austin received a Spanish grant or that his grant was confirmed. They have put that deed in evidence — they claim under it. This is the theory on which they filed their petition for half the land. If they claimed solely under the act they would sue for the entire property, as it appears from the testimony of Guy Bryan in evidence that plaintiffs are the only heirs at law of Moses Austin. The Pettibones were not related to Austin. On that same theory of the validity of that deed, they offered the survey of the land by Ashley. Hence we contend that under the case of Dickson *v.* Anderson, 9 Mo. 156, they are estopped from denying Austin's title as set forth in that deed.

IV.

If any estate passed by that deed to Bryan, it was divested by the decree of November 30, 1836, in case of John Deane *v.* Bryan, provided the court had jurisdiction — it does appear from sections quoted in brief of co-counsel that this preceeding was regular as far as the jurisdiction was concerned — it was regular in other respects — the bill was properly filed — the answer of the minors was in proper form — the service was proper — the decree was properly and duly rendered. But even if there were an irregularity in the decree, this court has decided that it can be attacked collaterally only on one ground, viz.: that the court had no jurisdiction.

Smith *v.* Pomeroy, 2 Dillon, 419.

There are a multitude of decisions to the same effect which I deemed it useless to collect. Now under that decree, whether rightly or otherwise, all the interest that these plaintiffs had in the property was vested in John Deane, whether the same were sold by the sheriff under the judgment against Austin in 1820, were under a sealed execution or not, or whether the sheriff's deed was properly sealed at the time or not. So far as these plaintiffs are concerned their mouths are closed. My co-counsel has devoted his attention entirely to this decree. Its effect being to fully divest all title out of these plaintiffs and vest it in John Deane. I will refer to his brief — his statement differing from plaintiffs and authorities cited.

V.

In the case of Pike *v.* Evans (94 U. S. 6) the court held, that where there was authority to sell, and occupation under sole prescription or more properly limitations cured any defect of title. In this case the deed is 58 years old. Besides the policy of the law is to discountenance frivolous objections to legal sales and to uphold such sales.

VI.

But even if the sale was not properly made and no proper deed ever given for the land under the sale, yet the plaintiffs can not recover under the Bryan deed, for another reason — the mortgage from Austin to the bank is unsatisfied, for as Edward Bates states in his award in the case of Deane *v.* Milan (see item 7 Record 127) — Risdon H. Price took possession under mortgage claim, and plaintiffs are not entitled to recover, unless they pay the mortgage debt. (Hubble *v.* Vaughn, 42 Mo. 138). Bryan took his title subject to the mortgagee, and if he were in possession, the mortgagee could, after maturity of the mortgage bring ejectment against him.

Walcop *v.* McBinney, 10 Mo. 229;
Sullon *v.* Mason, 38 Mo. 120;
Reddick *v.* Greenway, 49 Mo. 387;
Pease *v.* Pilot Knob Iron Co., 49 Mo. 124.

It may be claimed that by lapse of time this mortgage must be presumed as paid. We contend that our possession under the mortgage repels that presumption, while the evidence in this case and the allegation in the bill in case of Pettibone *v.* Price, to the effect that the Austin deed was a mortgage, would work with equal if not greater force against plaintiffs.

VII.

I think I have not omitted any points raised by plaintiffs on the trial except perhaps one, viz.: that the act of 1874 was intended to vest the land solely in Moses Austin and his heirs. That is not a proper construction. If that had been solely intended the words (" *to the heirs' legal representatives or assigns of said Moses Austin according to their respective interests therein. Provided, however, that this act shall not affect nor impair the title which any settler or other person may have acquired adverse to the title of said Moses Austin to any portion of said land* ") would not have been inserted. It is not to be presumed that the U. S. intended to perpetrate so glaring a fraud. It is to be presumed that Congress intended exactly what is recited in the act. We hold, and have held adversely to Moses Austin and his heirs, etc., since 1821, and claim to be fully protected by that act. There is a last view to be taken of this matter — from the evidence in this case it does not appear that Bryan paid one farthing for the interest claimed by his heirs — it appears that Austin himself abandoned the property 1820, went to Texas, returned to Missouri in 1821 and died at James Bryan's residence at Herculaneum Mo.; it appears that Bryan never took possession of the property after Austin left it — though residing until 1822 at Herculaneum, a few miles distant. No claim is made by any person claiming through Austin for upwards of 55 years while claimants under the sheriff's deed are struggling for title in the courts. This suit is the first claim put forward against onr title — we think that independent of the statute of limitations, these plaintiffs are estopped by the acts and omissions of Austin and Bryan from claiming any interest in this land.

VIII.

Finally an open, notorious, adverse and exclusive possession since 1821, is a complete bar to this suit — the facts are not disputed. Twenty years is the time limited in case, Hogan *v.* Kurz, 94 U. S. Rep. 773, while we show 56 years. Three generations of the family of John Deane have lived at the Deane homestead and this attempt to dispute the title of his grandchildren after all these years is of akin to the boldness and assurance with which others meeting you on the highway would deprive you of what was justly your own.

We submit there is no error in the record, and ask this court to affirm the judgment of the lower court in favor of defendants in the cause.

FRANK J. DONOVAN,
Counsel for Defendants.

113-179

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Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884.

WILLIAM J. BRYAN ET AL.,
Plaintiffs in Error,
vs.
FERD. B. KENNETT, ET AL.
No. 7.

ADDITIONAL ARGUMENT ON BEHALF OF DEFENDANTS IN ERROR.

GEO. D. REYNOLDS,
of Counsel for Defendants in error.

IN THE

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No. 7.

ADDITIONAL ARGUMENT ON BEHALF OF DEFENDANTS IN ERROR.

The statement, brief and argument which I filed in the above entitled cause on Oct. 11th, 1884, was prepared with the expectation of enlarging, orally, upon some of the points therein made, as well as of commenting on the most prominent points made by the learned counsel for plaintiffs in his brief. I beg leave now to submit a few comments, additional to those contained in the brief on file.

I.

THE RECORD FAILS TO DISCLOSE FACTS WHICH SHOW JURISDICTION IN THE LOWER COURT OR IN THIS COURT OVER THE CONTROVERSY. *It nowhere appears that the parties plaintiff and defendant were citizens of different States.*

The petition is silent on the citizenship of either plaintiffs or defendants.

In the summons (page 4, transcript) the Clerk commands the Marshal "to summon Ferdinand B. Kennett and

John Teasdale, citizens of the State of Missouri, that they be and appear before etc., in etc., on etc., then and there to answer the complaint of William J. Bryan, Moses A. Bryan and Guy M. Bryan, citizens of the State of ————, as set forth in the petition filed, etc."

There is nothing to warrant the statement that Kennett and Teasdale were citizens of the State of Missouri. In point of fact, a blank was used in which the words, "*citizens of the State of Missouri*" were printed.

After the suit was instituted, Fannie and Chas. H. Mallory, Margaret Deane and Annie G. Deane were, on their own motion, made parties defendant, as warrantors or grantors of defendants (see page 7, transcript), but no suggestion of their citizenship is made.

The only thing in the Record at all hinting at citizenship, is in the deposition of Guy M. Bryan, one of the plaintiffs, taken at Galveston, Texas, March 7th, 1878, in which he (see pages 16 and 17, transcript,) says: "I am one of the plaintiffs in the above entitled cause; my *residence* is in Galveston, Texas; * * I resided in Potosi, Mo., for several years preceding my removal to Texas in the spring of 1831. At that time my mother and step-father emigrated to Texas, where I have had my citizenship ever since. * * My mother had five children by my father; Stephen Austin, born July 16th, 1814, who died the following month; William Joel, born Dec. 14th, 1815; Moses Austin, born Sept. 25th, 1817, both at Hazel Run, Mo.; Guy Bryan (witness), born Jan. 12th, 1821, at Herculaneum, and Mary Elizabeth, born July 5th, 1822, at the same place, and died in Brazoria county, Texas, in 1833 and never married. The others are now living in Texas." This is all the Record contains on the question of citizenship.

We submit that there is nothing whatever in it to show that the plaintiffs and the defendants were, when the suit was instituted, citizens of different States. Failing which, the jurisdiction of the lower Court, and of this Court also, fails.

II.

There can be no question that Moses Austin is the common source of title.

Waiving, for the purpose of this argument, all question as to the validity or invalidity of the sales, or deeds thereunder, made by the Sheriff, 21st March, 1820, to Charles R. Ross, and by the Bank of St. Louis to Ross, —— April, 1820, it appears by the deed offered by the plaintiffs in error themselves, (see page 14 printed transcript,) that on the 15th of February, 1820, Moses Austin, joined therein by his wife, conveyed one undivided half of the survey to James Bryan, and the other undivided half to Levi and Rufus Pettibone.

It is beyond question that the one undivided half which was thus conveyed to the Pettibones passed to the ancestor of the defendants; whether it did or not, it most certainly went out of Moses Austin. Plaintiffs in error conceed this, both by their petition, which only claims the undivided half of the premises, as well as by the introduction of this deed, by which they are of course bound.

It might be assumed that by the introduction of this deed the claim of the plaintiffs in error to recover the other undivided half must rest, *not on their rights as heirs of Moses Austin, but as heirs of James Bryan*, the grantee, in that deed of Moses Austin. Such was evidently their own theory when they brought this suit. But when confronted with the decree rendered, in 1836, by the Circuit Court of Washington county in the case of Deane v. Bryan, *et al.*, (see page 124 transcript) they changed front and assumed that this decree declared and adjudged the above deed void, and agreed that if it was void, it was as if never made, and consequently left the title to the undivided half at least in Moses Austin, and in them as his heirs; and that they were entitled to recover that undivided half *as heirs of Austin.* The mistake as to the effect and meaning of the decree and the falacy of the argument based on it will appear on an examination of that decree.

In the bill filed by Deane, upon which this decree was rendered against the Bryans and Perrys in 1836, Deane claiming to be the legal representative of the bank, and to have acquired the interest it held as well by virtue of the Sheriff's sales as by the mortgage, charged that the deed of 15th February, 1820, was without any consideration, or if any, that it was given to secure payment of a debt which had since been paid, and that it was given expressly subject to the bank's claims, and prayed that the right and title in the defendants in that suit or of their ancestor, James Bryan, to the undivided half of said survey, conveyed by said deed, be vested in him. He evidently considered that this deed had vested in James Bryan the legal title to Austin's equity of redemption, and sought to have that title vested in himself.

The decrees, both the interlocutory one against the adults and the one on final hearing against the infants (see pages 124 and 125 of transcript) expressly vest the title acquired by James Bryan and by the defendants in that suit as his heirs, in Deane, and in neither of them is the deed treated as a void instrument; on the contrary that deed is expressly recognized, both in the bill and the decree as effectual in conveying the legal title; and through and by means of that deed the equity of redemption is recognized to have legally passed from Austin to James Bryan and is thus passed along, though James Bryan and his heirs, by decree of the Court, to Deane as the person equitably entitled to it. So that it seems pretty clear, that *as heirs of Moses Austin*, when we consider this deed, the plaintiffs have no title at all. If they recover it must be *as heirs of James Bryan*. If then, the decree rendered in the above suit is a valid decree, it certainly passed to and vested in John Deane, the ancestor of defendants, the undivided moiety of the estate which Austin had conveyed to James Bryan by that deed, as fully and effectually as if John Deane had been named in it instead of James Bryan. Let us examine that decree. In the statement which accompanies the brief which I have already filed, I have given a synopsis of the record of this case of Deane v. Bryan, *et al.*, in which this decree was rendered. It will be found on pages 1 to 7 of that statement.

The statutes in force in this State, regulating practice in chancery when that suit was brought and determined are set out on pages 7 to 9.

On page 6 of that statement (see also pages 124 and 125 of the printed transcript) the final decree is set out in full.

It will be seen by an examination of that decree, that it was not, as argued and asserted by plaintiffs, a *consent* nor a *pro confesso* decree, as to the minors, nor rendered without proof. It also appears that at the term before the final decree was rendered, the minors, by their guardian *ad litem*, had answered. What that answer was does not affirmatively appear.

The decree reads: "And now at this day comes the said John Deane, the complainant, by his solicitor, and the said William Bryan, Moses Bryan, Guy Bryan, Stephen Perry, Eliza Perry and a child whose name is unknown, of the said Emily Bryan, defendants, by their guardian, John Brickey, and by agreement of parties aforesaid, it is consented *that the bill be taken in lieu of allegations*, and thereupon, neither party requiring a jury, all and singular the premises are submitted to the Court, *who doth find that the matters aforesaid, in form aforesaid, in the bill alleged, are true*," etc.

Here is no *consent to a decree*, but a mere consent that "*the bill be taken in lieu of allegations*." The meaning of this phrase is fully explained by Sections 1, 2 and 5, of Article 3 of the Chancery Act (see statement and brief, page 8, for these sections), in which it is provided that parties shall *set down the material allegations*, which are to be tried, and to which the testimony is to be confined, and that *the allegations so put in issue*, shall be disposed of by a general or special verdict.

Hence all the "consent" in the case was, that instead of the plaintiff being held to prove *certain controverted allegations, he was put to the proof of all the allegations, exactly opposite to what the plaintiffs in error contend was done;* obviously, therefore, the answer of the guardian *ad litem* very properly *admitted or confessed nothing at all*, but put complainant to proof of everything.

True, the decree does not say in so many words, that the Court heard testimony, but as it was its duty to do so, and it was a Court of general jurisdiction, *the presumption is, conclusively, that it did.*

That the proceedings in the suit were in all things strictly in conformity to the statute regulating such suits, and to the decision of our Courts, and to the usual practice in the English Chancery Courts I think I have shown in my former brief, which I trust the Court will examine.

I have also there shown, as I think, that the decree did pass the title of these plaintiffs in error to Deane, the ancestor of defendants.

I have also there shown that a decree so rendered by a Court of general jurisdiction cannot be attacked collaterally except for fraud, and no fraud is alleged.

I call attention also to the fact before leaving this point, that in every case cited by counsel for plaintiffs under his 12th point (pages 38, 39 and 40) and also 13th point, down to the end of the first paragraph, (on page 44 of his brief,) the decree was attacked, not collaterally, but on appeal, writ of error or by a direct proceeding to set it aside; or if attacked collaterally, it was on the ground of fraud.

No case could present greater hardships than presented in Shields v. Powers, 29 Mo., 315, where the guardian *ad litem refused to act*, and a decree *pro confesso* was rendered without the taking of any proof. The case was taken to the Supreme Court on writ of error, but no supersedeas bond was given, and pending the writ of error, the land was sold; the judgment of the lower Court was *reversed*, and yet with all this, the Supreme Court held that the judgment against the infants *pro confesso* and in the absence of a guardian *ad litem* was *error only*, did not render the decree void, and that it could not be attacked collaterally. I invite especial attention to this case, as it seems conclusive against plaintiffs on every objection they make to this decree.

III.

If, however, there is any force in the argument that the deed of 15th February, 1820, was declared void, and that therefore the estate remains as if the deed had never been made, and that these plaintiffs, as heirs of Moses Austin should recover, I present another view of the case, first suggesting that if that is so, the plaintiffs should have sued, not for a moiety of the estate but for all of it, and should not have introduced that deed in evidence as part of their title, for that deed certainly conveyed the whole title away from Austin and his heirs.

Prior to the execution of this deed of 15th February, 1820, Austin had executed a mortgage on the same land, dated March 11th, 1818, to the President, Directors and Company of the Bank of St. Louis, (see transcript p. 25) to secure fifteen thousand dollars, or thereabouts. It appears by the recitals in the deed of 15th February, 1820, that this mortgage had not then been paid. So that all the estate Austin then had was the equity of redemption.

Subsequently the interest of Austin was sold out by the Sheriff, under judgments in favor of the Bank and of McNair, and bid in, 21st of March, 1820, by Ross, as agent for the Bank, on the nominal consideration of seventy-one hundred dollars, just about half the amount of the Bank's judgment.

Now let it be conceeded, for the sake of the argument, that the equity of redemption could not be defeated by the creditor suing on the debt, and levying upon and selling out the interest of the debtor in the land, and that for that reason as well as on account of defective execution of the deeds, that those sales were void. How does this help the plaintiffs, as heirs of Moses Austin? It does appear by the averments in the bill of Deane vs Perry and Bryan (tr. p. 116), as well as by the finding of the Court in that case, that after that sale, to-wit, on the 27th of April, 1821, a settlement was had between Austin and the Bank, of the mortgage debt, in which settlement the Bank took the land at $11,360 and allowed Austin a credit for that sum on the mortgage debt. This being done, it of course released or passed to the Bank or its assigns the property free and discharged of the equity of redemption. It would therefore follow that if the effect of the decree in the equity suit was to declare the deed from Austin to Bryan and the Pettibones void, then the surrender by Austin, the mortgagor, to the Bank, the mortgagee, or to its assigns, of the mortgaged premises in payment or settlement of the debt, being an extinguishment of the equity of redemption, the Bank and its assigns would take, and not the heirs of Austin.

IV.

The validity of the mortgage given by Austin to the Bank in 1818, is not questioned, nor is it pretended that Austin ever paid the debt, unless he did so in the settlement of 1821, by a surrender of the mortgaged premises.

True, the proposition is announced by the counsel for plaintiffs in error, on page 45 of his brief, that "the mortgage debt also has ceased, by operation of law, to have any existence. It has been paid by the common law presumptive of payment."

But this rule is only applicable *when the mortgagor has* *remained in possession of the land*, without making any payment of either principal or interest, or doing any other act in recognition of the mortgage debt.

2 Jones on Mortgages, § 915.

"No presumption of payment, however, can arise from lapse of time when the mortgagee, or his assigns, is in possession of the land."

Ibid, citing Brobst v. Brock,
10 Wall., 519.

In general, except when changed by modern statutes, the rule adopted by Courts of Equity in regard to the redemption of mortgages, is in analogy with the right of entry at law, under the statute of limitations, 21 Jac. 1, C. 16, that twenty years' possession by the mortgagee, without any account or acknowledgment of a subsisting mortgage, is a bar, unless the mortgagor is within some of the exceptions made for disabilities. * * Such lapse of time affords evidence of a presumption that the mortgagor has abandoned his right. * * After the mortgagee has remained in possession for twenty years, without accounting, or in any way acknowledging the right of redemption in the mortgagor, the latter cannot redeem."

2 Jones Mortgages, § 1144.

It clearly and incontestably appears that the Bank or its grantees entered upon the premises in 1820 or thereabouts (at which date, according to the testimony of one of the plaintiffs in error—see Guy M. Bryan's deposition, page 17, transcript—Austin not only abandoned possession of the premises, but removed from the State,) and that they have been in possession ever since. The presumption then is, that this was an entry by the mortgagee after condition broken, and continued possession ever since, without the pretence even of accounting for rents, or of any other acts indicating that the relation of mortgagor and mortgagee still existed, is as effectual a foreclosure as one by a decree and sale thereunder.

2 Jones Mortgages, § 1237.

At all events, whether this mortgage was foreclosed by surrender of the premises by the mortgagor to the mortgagee and entry by the latter, or whether it is still outstanding and unsatisfied, it is sufficient to defeat a recovery by these plaintiffs in this action, whether they claim through Austin or through Bryan.

V.

It is claimed by plaintiffs in error, that Moses Austin had no title to the league square which could be subjected to levy and sale under execution, because the grant of Morales to Austin was absolutely void, having been made by the Spanish authorities after the 1st of October, 1800, and that the concession being void there was no equity to levy on.

See point 1, pages 18, 19 and 20 of their brief.

While it is true that this Court, in Foster & Elam vs. Neilson, 2 Peters, 253, held grants made by the Spanish authorities after Oct. 1st, 1800, void, yet it is to be remembered that that case and others following it, cited by the plaintiffs, related to land claims in what is known as the Perdido claim, a territory long the subject of a fierce dispute between our Government and that of Spain, and a reference to the history of that controversy will show why the law and decisions relating to lands in that claim did not apply, or at least were not applied by our Government to lands and claims in the Louisiana purchase, *west* of the Mississippi. (For a very concise history of the Perdido controversy, see History of the Public Domain, Ex. Doc. No. 47, Part 4, 46th Congress, 3d Session, page 108). It appears by the case of U. S. vs. Perchman, 7 Peters, 51, that these first decisions were based on an erroneous reading of the second article of the treaty of 22d July, 1819, between the U. S. and Spain.

At all events, even the case of Foster vs. Neilson, concedes that *actual settlers* are not affected by the Act of 26th of March, 1804; and Congress by repeated acts, notably by the 1st section of Act of 12th April, 1814, recognizes grants by the *de facto* officers to lands within the Territory of Missouri.

It is under the first section of the last cited Act (See 3 stat. at large, p. 122,) that we claim confirmation, not under the second section. Therefore the case of

Burgess vs. Gray et al., 16 How. p. 48, cited by plaintiffs, is not in point.

But the claim of Austin did not depend upon the Morales grant in the first instance.

Its inception dates from March 15th, 1797, when the Baron de Carondelet, Governor-General of the Province of Louisiana, ordered Zeno Trudeau, Lieutenant-Governor, to place Austin in possession of a league square at Mine a Breton: when Trudeau, on January 14th, 1799, ordered Soulard, Surveyor, to survey the land and put Austin in possession; when, on June 2d, 1800, Soulard surveyed the tract of which Austin was then, and ever since October, 1798, had been in possession.

See preamble to Act of 14th Febry., 1874;
Also transcript pages 21, 22, 23 and 24;
Also statement of counsel for pl'ffs. pp. 1 and 2;
Also statement of Mr. Donovan, pp. 1 and 2.

All these acts were done prior to Oct. 1st, 1800, the date of the treaty of St. Ildefonso; and they constituted Austin the owner of an incomplete Spanish Grant.

By this grant from the Baron de Carondelet and the subsequent acts of the Spanish officers prior to 1st October, 1800, Austin acquired a right of property which, irrespective of treaties, even, the United States, under the law of nations, was bound to respect.

Strother v. Lucas, 12 Peters, at page 436;

it was a property interest, inchoate and inceptive, but none the less property; and "had so attached to the tract as to affect the conscience of the then sovereign, the King of Spain, with a trust, and made him a trustee for Austin, according to the law of nations, according to the principles of justice and according to the rules of equity."

Strother v. Lucas, *supra*, page 436, and a long list of cases there cited.

So that even if the subsequent steps to complete the grant, taken between 1st Oct., 1800 and 1802, were void (though this Court has said in Menard's heirs v. Massey, 8 Howard, p. 304, that this was a complete grant) by reason of Spain having parted with her sovereignty over the territory in October, 1800, yet as Spain was the *de facto and de jure* sovereign in 1797 when her representative made the grant, the title with which she then invested Austin was a property right which this Government was bound to respect, which it has always respected, and which is distinctly referred to by Congress as the foundation of the release made by the Act of 14th Febry., 1874.

Even if the attempted completion of the grant by Morales was void, the prior valid acts were not affected nor vitiated. It simply left it an incomplete grant; brought it within the very letter of the first section of the Act of 12th April, 1814.

This was such a title in Austin, as was subject to seizure and sale under execution, and as a Court of Equity could divest him of. It was to this phase of the case, namely, that Austin's title, though incomplete, was subject to the control of the Courts, that the Circuit Court cited the cases of Landis v. Brant, 10 How. 348; and Landis v. Perkins, 12 Mo. 238. In the former case it is also to be noted that this Court distinctly holds that when the legal title passes it reverts to the benefit of the purchaser or holder of the imperfect title, and it is distinctly held, that the patentee being dead at the date of the issue of the patent, under the Act of Congress of 20th May, 1836, the purchaser takes the title. In the same spirit, Congress, by the Act of

6th June, 1874, (see 18 Stat. at Large, part 3, page 62) entitled "an Act to obviate the necessity of issuing patents for certain private land claims in the State of Missouri, and for other purposes," distinctly recognizes this doctrine of relation. If this is not true, then this last cited Act, which was intended to quiet all titles in Missouri, will have the effect of disturbing and vacating hundreds of them. In short, it would be very extraordinary now to hold that all rights first emenate from the passage of the Act of 15th Feb'y, 1874, to the Austin survey.

If this is so, then on what principle do these plaintiffs in error claim anything? The confirmation or release is to the *legal representatives and assigns* of Austin, as much as to the *heirs*. If the Act does not enure to the benefit of the legal representatives and assigns, on what principle does it enure to the heirs?

If it is true, that no title, legal or equitable, was in Austin prior to the Act of February 14, 1874, and that he had no vendible estate, he had no inheritable one.

If, however, he had such a title (legal or equitable) in 1820, that he could sell, or that could pass by descent to his heirs, then under the laws and repeated decisions of our courts, it was a title or interest the courts could sequestrate.

VI.

When the Act of 14th of February, 1874, was passed, it enured to the benefit of the defendants, as I have already attempted to show in my first brief, and as is clearly held in the case of Landis vs. Brandt, 10 How., 348, and Hogan vs. Page, 2 Wall., 605.

But even if the Act of 14th of February, 1874, had not in terms had this effect, the covenants in both the mortgage and the deed of February 15th, 1820, by force of the then existing statutes would have carried the interest of Austin and his heirs, acquired under the Act, back to these defendants,